



भारत का राजपत्र

The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक

WEEKLY

सं. 48]

नई दिल्ली, नवम्बर 23—नवम्बर 29, 2003, शनिवार/अग्रहायण 2—अंग्रहायण 8, 1925

No. 48] NEW DELHI, NOVEMBER 23—NOVEMBER 29, 2003, SATURDAY/AGRAHAYANA 2—AGRAHAYANA 8, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि वह असम संकलन के स्वरूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii).

भारत सरकार के मंत्रालयों (राज्य मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

आयकर अनुसूचना कार्यालय

कोच्ची, 10 निताम्बर, 2003

का०आ० 3274.—आयकर अधिनियम, 1961 की धारा 120 की उपधारा (1) और (2) द्वारा प्रदत्त शक्तियों, और इस निमित्त उन्हें प्राप्त अन्य सभी शक्तियों का प्रयोग तथा केन्द्रीय प्रश्नकार कर बोर्ड द्वारा जारी अधिसूचना सं. 206/2003 दिनांक 27-8-2003 का अनुसरण करते हुए। मुख्य आयकर आयुक्त, कोच्ची एवंद्वारा निदेश देते हैं कि इसके साथ संलग्न अनुसूची के कॉलम (3) में उल्लिखित आयकर अधिकारी उन नए स्थाई सेक्षनों संख्या आवेदकों पर उनके द्वारा फार्मल की गई फहरी विवरणों का संसाधन बनाने तक अवशिष्ट क्षेत्राधिकार का प्रयोग करेंगे जो दिनांक 1-7-2003 को या उसके बाद स्था.ले.सं. के लिए आवेदन करते हैं जहां कॉलम (2) में उल्लिखित स्थानों में उनका क्षेत्राधिकार स्पष्ट नहीं है।

अनुसूची

क्र. सं.	केरल में स्थित आयकर कार्यालय का स्थान	नामित अधिकारी जिन्हें अवशेष श्रेणी के नए "पान" आवेदकों पर क्षेत्राधिकार है	कार्यालय पता	ए.ओ. कोड
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(1)	(2)	(3)	(4)	(5)
1.	एरणाकुलम	आयकर अधिकारी बार्ड-2(4), एरणाकुलम	आयकर कार्यालय, केन्द्रीय सज्जन भवन, आई.एस.प्रेस रोड, कोच्ची-682018	केरल-डब्ल्यू-12-4

(1)	(2)	(3)	(4)	(5)
2.	आलुवा	आयकर अधिकारी वार्ड-3, आलुवा	आयकर कार्यालय, के.ए.पी. कमर्शियल कांस्टेक्स, रेलवे स्टेशन रोड, आलुवा	केआरएल-डब्ल्यू-15-3
3.	गट्टांचेरी	आयकर अधिकारी वार्ड-1, गट्टांचेरी	आयकर कार्यालय, अग्राहा बिल्डिंग, चक्रान्ति जंक्शन, कर्मचारी-5	केआरएल-डब्ल्यू-13-11
4.	तोडुपुणा	आयकर अधिकारी तोडुपुणा	आयकर कार्यालय, महिमा ट्वर्चेरा , टेंबिल रोड, तोडुपुणा	केआरएल-डब्ल्यू-11-11
5.	तुश्शूर	आयकर अधिकारी वार्ड-2(2), तुश्शूर	आयकर कार्यालय, शक्तन तंपुरान नगर, तुश्शूर-680001	केआरएल-डब्ल्यू-22-2
6.	पालक्काड	आयकर अधिकारी वार्ड-1, पालक्काड	आयकर कार्यालय, इंडोश चर्च रोड, पालक्काड-678014	केआरएल-डब्ल्यू-25-1
7.	कोपिक्कोड	आयकर अधिकारी वार्ड-1(3), कोपिक्कोड	आयकर कार्यालय, मानांचिरा, कोपिक्कोड-673001	केआरएल-डब्ल्यू-31-3
8.	तिरुर	आयकर अधिकारी वार्ड-2, तिरुर	आयकर कार्यालय, तारीक बाजार, टी एच रोड, तिरुर	केआरएल-डब्ल्यू-33-12
9.	कण्णूर	आयकर अधिकारी वार्ड-2(2), कण्णूर	आयकर कार्यालय, सहना आडिटोरियम, मेले चोव्या, कण्णूर-670006	केआरएल-डब्ल्यू-42-2
10.	कासरगोड	आयकर अधिकारी वार्ड-1, कासरगोड	आयकर कार्यालय, विधा नगर, कासरगोड-671121	केआरएल-डब्ल्यू-42-11
11.	तिरुवनंतपुरम	आयकर अधिकारी वार्ड-1(3), तिरुवनंतपुरम	आयकर कार्यालय, आयकर भवन, कवडियार, तिरुवनंतपुरम-695003	केआरएल-डब्ल्यू-51-3
12.	कोल्लम	आयकर अधिकारी वार्ड-3, कोल्लम	आयकर कार्यालय, श्रीनीलपदम बिल्डिंग, परमेश्वर नगर, होस्पिटल रोड, कोल्लम-691 001	केआरएल-डब्ल्यू-53-3

(1)	(2)	(3)	(4)	(5)
13.	कोट्टयम	आयकर अधिकारी वार्ड-1, कोट्टयम	आयकर कार्यालय, पब्लिक लाईब्रेरी विल्डिंग, लाल बहादुर शास्त्री रोड, कोट्टयम-686001	केआरएल-डब्ल्यू-61-1
14.	आलप्पुरा	आयकर अधिकारी वार्ड-1, आलप्पुरा	आयकर कार्यालय, आयकर भवन, आलप्पुरा-683001	केआरएल-डब्ल्यू-62-1
15.	तिरुवल्ली	आयकर अधिकारी वार्ड-1, तिरुवल्ली	आयकर कार्यालय, एनिककाटिटल, एस्टेट, एस सी एस जंक्शन, तिरुवल्ली-689101	केआरएल-डब्ल्यू-63-1

[सं. सी सी/कोचिन/ज.सं. क्षेत्रा-7/2000-01]

बी. एम. जिन्दल, मुख्य आयकर आकृष्ट

MINISTRY OF FINANCE

(Department of Revenue)

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX

Kochi, the 10th September, 2003

S.O. 3274.—In exercise of the powers conferred by sub-section(1) and (2) of Section 120 of the Income Tax Act, 1961, and all other powers enabling him in this behalf, and in pursuance of the Notification issued by the Central Board of Direct Taxes in Notification No. 206/2003 dated 27-8-2003, the Chief Commissioner of Income Tax, Cochin, hereby orders that the Income tax Officers mentioned in Column (3) of the Schedule hereto annexed shall exercise residual jurisdiction over the new Pan Applicants, who apply for PAN on or after 1-7-2003, wherever jurisdiction is not clear in their respective stations mentioned in column (2), until such time as the first return of income filed by such allottees (PAN Applicants) is processed.

SCHEDULE

Sl. No.	Station in Kerala where IT offices are located	Officer nominated to have jurisdiction over residual category of new PAN Applicants	Office Address	AO CODE
(1)	(2)	(3)	(4)	(5)
1.	Ernakulam	ITO, Ward-2(4), Ernakulam	Income Tax Office, C.R. Building, I.S. Press Road, Kochi-682018	KRL-W. 12-4
2.	Aluva	ITO, Ward-3, Aluva	Income Tax Office, KAP Commercial Complex, R.S. Road, Aluva-683101	KRL-W. 15-3
3.	Mattancherry	ITO, Ward-1, Mattancherry	Income Tax Office, Ashoka Building, Chakkanattu Junction, Kochi-5	KRL-W. 13-11
4.	Thodupuzha	ITO, Ward-1, Thodupuzha	Income Tax Office, Mahima Towers, Temple Road, Thodupuzha	KRL-W. 11-11
5.	Thrissur	ITO, Ward-2 (2), Thrissur.	Income Tax Office, Shakthan Thampuran Nagar, Thrissur-680001	KRL-W. 22-2
6.	Palakkad	ITO, Ward-1, Palakkad	Income Tax Office, English Church Rd., Palakkad-678014	KRL-W. 25-1

(1)	(2)	(3)	(4)	(5)
7.	Kozhikode	ITO, Ward-1(3), Kozhikode	Income Tax Office, Mananchira, Kozhikode-673001	KRL-W. 31-3
8.	Tirur	ITO, Ward-2, Tirur	Income Tax Office, Tariff Bazar, T.H. Road, Tirur	KRL-W. 33-12
9.	Kannur	ITO, Ward-2 (2), Kannur	Income Tax Office, Sahana Auditorium, Melechowa, Kannur-670006	KRL-W. 42-2
10.	Kasaragod	ITO, Ward-1, Kasaragod	Income Tax Office, Vidhya Nagar, Kasaragod-671121	KRL-W. 42-11
11.	Trivandrum	ITO, Ward-1(3), Trivandrum	Income Tax Office, Aayakar Bhavan, Kawdiar, Trivandrum-695003	KRL-W. 51-3
12.	Kollam	ITO, Ward-3, Kollam	Income Tax Office, Sreeneelapadam Buildings, Parameswar Nagar, Hospital Road, Kollam-691001	KRL-W. 53-3
13.	Kottayam	ITO, Ward-I, Kottayam	Income Tax Office, Public Library Building, Lal Bahadur Shastri Rd, Kottayam-686001	KRL-W. 61-1
14.	Alleppey	ITO, Ward-I, Alleppey	Income Tax Office, Aayakar Bhavan, Alappuzha-688001	KRL-W. 62-1
15.	Thiruvalla	ITO, Ward-1, Thiruvalla	Income Tax Office, Ennikattil Estate, SCS Junction, Thiruvalla-689101	KRL-W. 63-1

[No. CC/CHN/PR.JUR-7/2000-01]

B.M. JINDEL, Chief Commissioner of Income Tax

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 11 नवम्बर, 2003

का.आ. 3275.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2डं के साथ घटित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2002-2003, 2003-2004 और 2004-2005 के लिए नीचे पैरा (3) में उल्लिखित उद्यम/औद्योगिक उपक्रम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2डं. के साथ घटित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है, अथवा

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2डं के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं करता है, अथवा

(ग) आयकर नियमावली, 1962 के नियम 2डं. के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

(घ) दिनांक 31-3-2006 तक विद्युत उत्पादन शुरू करने में असफल रहता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

मैसर्स वेमागिरी पावर जेनरेशन लि., 1005, 10वां तल दलामल टावर्स, 211, प्री ब्रैस कालोनी, जर्सल मार्ग, नरीमन प्लाइट, मुम्बई-400021 को वेमागिरी, ईस्ट गोदावरी डिस्ट्रिक्ट-आंध्र प्रदेश में उनकी 520 मेगा वाट गैस आधारित पावर परियोजना के लिए। (फा. सं. 205/5/2002आईटीए-II)

[अधिसूचना सं. 284/2003/(फा.सं. 205/5/2002-आयकर नि.-II)]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 11th November, 2003

S.O. 3275.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2002-2003, 2003-2004 and 2004-2005.

2. The approval is subject to the condition that—

- (i) The enterprise/industrial undertaking will conform to and comply with the provisions of section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;
- (ii) The Central Government shall withdraw this approval if the enterprise/industrial undertaking :—
 - (a) Ceases to carry on infrastructure facility; or
 - (b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or
 - (c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.
 - (d) fails to begin generating power by 31-3-2006.

3. The enterprise/industrial undertaking approved is—

M/s. Vemagiri Power Generation Ltd, 1005, 10th Floor Dalmal Towers, 211, Free Press Colony, Journal Marg, Nariman Point, Mumbai-400021 for their project 520 MW gas based power project at Vemagiri, East Godavari District, Andhra Pradesh.(F. No. 205/5/2002-ITA-II)

[Notification No. 284/2003/(F. No. 205/5/2002-ITA-II)]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 11 नवम्बर, 2003

का०आ० 3276.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2४ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2004-2005, 2005-2006 और 2006-2007 के लिए नीचे दी गई (3) में उल्लिखित उद्यम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

- (i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2४ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,
- (ii) केन्द्र सरकार यह अनुमोदन वापिस से लेगी यदि उद्यम/औद्योगिक उपक्रम :—
 - (क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है, अथवा
 - (ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2४ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं करता है, अथवा
 - (ग) आयकर नियमावली, 1962 के नियम 2४ के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

मैसर्स एच एफ सी एल इनफोटेल लिमिटेड (पूर्व नाम मैसर्स डि इन्वेस्टमेंट ट्रस्ट आफ इंडिया लिमिटेड) मश्कुर बिल्डिंग संख्या-1, कुण्डा रोड, नुगमबक्षम, चेन्नई को उनके लाइसेंस संख्या 17-15/95/बी.एस.-II/पंजाब दिनांक 7-11-97 के अंतर्गत पंजाब परिमंडल में टेलीफोन सेवाएं उपलब्ध कराने के लिए परियोजना। पिछली बार यह अनुमोदन मैसर्स एच.एफ.सी.एल. इन्फोटेल लिमिटेड पता सी. 25, इंडस्ट्रियल एरिया, फेस-2, एस.ए.एस. नगर, मोहाली-160055 (पंजाब) के नाम पर किया गया था (फा. सं. 205/42/98-आयकर नि. II खण्ड-II)

[अधिसूचना सं. 282/2003/(फा.सं. 205/42/98-आयकर नि.-II-खण्ड II)]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 11th November, 2003

S.O. 3276.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2004-2005, 2005-2006 and 2006-2007.

2. The approval is subject to the condition that—

- (i) The enterprise/industrial undertaking will conform to and comply with the provisions of section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;
- (ii) The Central Government shall withdraw this approval if the enterprise/industrial undertaking :—
 - (a) Ceases to carry on infrastructure facility; or
 - (b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or
 - (c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is—

M/s HFCL Infotel Ltd. (Formerly M/s. The Investment Trust of India Ltd.) Mashkur Building, No. 1, Krishnamra Road, Nugainbakkam, Chennai for their project of providing Telephone services in Punjab Circle vide licence No. 17-15/95/BS-II/Punjab dated 7-11-97. The approval was last made in the name of M/s. HFCL Infotel Ltd. with address C-25, Industrial Area, Phase 2, SAS Nagar, Mohali-160055 (Punjab) (F. No. 205/42/98/ITA-I-Vol.II).

[Notification No. 282/2003/(F. No. 205/42/1998-ITA-II(Vol. II))]

SANGEETA GUPTA, Director (ITA-II)

शुद्धिपत्र

नई दिल्ली, 11 नवम्बर, 2003

का०आ० 3277.—आयकर अधिनियम, 1961 की धारा 10 के खण्ड (23-छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा दिनांक 14-3-2001 की अधिसूचना सं. 57/2001 द्वारा अनुमोदित एवं दिनांक 21-9-2001 की अधिसूचना सं. 301/2001 द्वारा संशोधित उद्यम की परियोजना के नाम और प्रकार में निम्नलिखित सुधार करती है।

2. उपर्युक्त अधिसूचना के पैरा 3 में, उद्यम और परियोजना के नाम को सुधार कर निम्नवत् पढ़ा जाए।

“मैसर्स वंगाल पीयरलेस हाऊसिंग डेवलपमेंट कम्पनी लि., कृष्णा विलिंग, 224, ए.जे.सी. बोस रोड, द्वितीय तल, कलकत्ता-700017 एवं उनकी परियोजना वी.आई.पी.रोड, कलकत्ता पर स्थित अनुपमा बिलिंग का विकास”।

[अधिसूचना सं. 283/2003/(फा.सं. 205/23/2000-आयकर नि.-II)]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

CORRIGENDUM

New Delhi, the 11th November, 2003

S.O. 3277.—In exercise of the powers conferred by clause (23G) of Section 10 of the Income tax Act, 1961, the Central Government hereby makes the following correction in the name and style of the project of the enterprise approved vide Notification No. 57/2001 dated 14-3-2001 and corrected by Notification No. 301/2001 dated 21-9-2001.

2. In para 3 of the Notification referred to above, the name of the enterprise and the project shall be corrected to read as—

M/s Bengal Peerless Housing Development Company Ltd., Krishna Building, 224, AJC Bose Road, 2nd Floor, Calcutta-700017 for their project of Development of Anupama Building Complex Phase II on VIP Road Calcutta.”

[Notification No. 283/2003/(F. No. 205/23/2000/ITA-II)]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 14 नवम्बर, 2003

(आयकर)

का०आ० 3278.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा अधिसूचित संगठन को उसके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (I), के खंड (ii) के प्रयोजनाथ “संघ” श्रेणी के अंतर्गत निम्नलिखित शर्तों के अधीन अनुमोदित किया गया है :—

- (i) अधिसूचित संघ अपने अनुसंधान कार्यकलापों के लिए अलग लेखा वहियों का रख-रखाव करेगी;
- (ii) अधिसूचित संघ प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गतिविधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग ‘टेक्नोलॉजी भवन’ न्यू महरौली रोड, नई दिल्ली-110016 को प्रस्तुत करेगी;
- (iii) अधिसूचित संघ केन्द्र सरकार की तरफ से नामोदिष्ट निर्धारण अधिकारी को आयकर विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों, जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अंतर्गत छूट प्रदान की गई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संगठन पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट), 10, मिडलटन रो, पांचवा तल, कलकत्ता-700071, (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्टूबर को अथवा उससे पहले प्रस्तुत करेगी।

क्रम सं.	अनुमोदित संगठन का नाम	अवधि जिसके लिए अधिसूचना प्रभावी है
1.	मैसर्स सेंटर फार मेरिएल्स फार इलेक्ट्रॉनिक्स टेक्नोलॉजी, इलेक्ट्रॉनिक्स निकेतन, 6, सी जी ओ क्लाप्पलेक्स, लोदी रोड, नई दिल्ली-110003	1-4-1999 से 31-3-2001

टिप्पणी :—अधिसूचित संघ को सलाह दी जाती है कि वह अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी।

[अधिसूचना सं. 294/2003/(फा.सं. 203/31/2002-आयकर नि.-II)]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 14th November, 2003

(INCOME TAX)

S.O. 3278.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned below, for the purpose of clause (ii) of Sub-section (1) of Section 35 of the Income-tax Act, 1961, read with Rule 6 of the Income tax Rules, 1962 under the category "Association" subject to the following conditions :—

- (i) The notified Association shall maintain separate books of account for its research activities;
- (ii) The notified Association shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific & Industrial Research 'Technology Bhawan' New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;
- (iii) The notified Association shall submit, on behalf of the Central Government to (a) the Director General of Income-tax (Exemptions), 10, Middleton Row, 5th Floor, Calcutta-700071, (b) the Secretary, Department of Scientific & Industrial Research, and (c) the Commissioner of Income-tax/Director of Income-tax (Exemptions) having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income & Expenditure Account in respect of its research activities for which exemption was granted under Sub-section (1) of Section 35 of Income-tax Act, 1961 in addition to the return of Income tax to the designated assessing officer.

S. No.	Name of the organisation approved	Period for which notification is effective
1.	M/s. Centre for Materials for Electronics Technology, Electronics Niketan, 6, CGO Complex, Lodhi Road, New Delhi-110003.	1-4-1999 to 31-3-2001

Notes : The notified Association is advised to apply in triplicates as well in advance for renewal of the approval to the Central Government through the Commissioner of Income-tax/Director of Income-tax (Exemptions) having jurisdiction. Three copies of the application for renewal of approval shall also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 294/2003/(F. No. 203/231/2002-ITA-II]

SANGEETA GUPTA, Director (ITA-II)

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 21 नवम्बर, 2003

का.आ. 3279.—राष्ट्रीय कृषि और ग्रामीण विकास बैंक अधिनियम, 1981 (1981 का 61) की धारा 6 की उपधारा (2) के साथ पठित उसकी उपधारा (1) के खंड (क) और धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक के परामर्श से एतद्वारा श्रीमती रंजना कुमार, वर्तमान अध्यक्ष एवं प्रबंध निदेशक, इंडियन बैंक को अपना कार्यभार संभालने की तारीख से 60 वर्ष की आयु पूरी करने तक अर्थात् 31-12-2005 तक या अगले आदेशों तक, जो भी पहले हो, 26,000/- रु. (नियत) के बेतनमान में राष्ट्रीय कृषि और ग्रामीण विकास बैंक का अध्यक्ष नियुक्त करती है।

[फा. सं. 7/1/2003-बी.ओ.I]

रमेश चन्द, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 21st November, 2003

S.O. 3279.—In exercise of the powers conferred by clause (a) of Sub-section (1) of Section 6 read with Sub-section (2) thereof and Sub-section (1) of Section 7 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981), the Central Government, in consultation with Reserve Bank of India, hereby appoints Smt. Ranjana Kumar, presently Chairperson and Managing Director, Indian Bank as Chairperson, National Bank for Agriculture and Rural Development (NABARD) in the pay scale of Rs. 26000/- (fixed) with effect from the date of taking charge of the post till she attains the age of 60 years i.e. upto 31-12-2005 or until further orders, whichever event occurs the earliest.

[F. No. 7/1/2003-B.O.I]

RAMESH CHAND, Under Secy.

संचार एवं सूचना प्रौद्योगिकी मंत्रालय

(डाक विभाग)

(डाक जीवन बीमा निदेशालय)

नई दिल्ली, 15 अक्टूबर, 2003

का.आ. 3280.—अधिसूचना सं. 25-5/2003-एलआई दिनांक 4/18-8-2003 के अंतर्गत प्रेषित डाकघर बीमा निधि नियमावली के नियम 5 की तालिका I और II के अधिकरण में, राष्ट्रपति 19 और 55 वर्ष के बीच की प्रवेश आयु के लिए उपर्युक्त नियम की संशोधित तालिका I और II भेजते हैं।

[सं. 25-5/2003-एलआई]

वी. पति, उप महाप्रबंधक

तालिका-I
डाकघर बीमा निधि-4 अगस्त-2003 से लागू प्रीमियम
आजीवन बीमा
(रु. 5000/- के बीमा के लिए मासिक प्रीमियम)

प्रवेश के समय आयु		परिपक्वता आयु		प्रवेश के समय आयु
(1)	(2)	(3)	(4)	(5)
	55	58	60	
19	8	7	7	19
20	8	8	7	20
21	8	8	8	21
22	8	8	8	22
23	9	8	8	23
24	9	9	8	24
25	9	9	9	25
26	9	9	9	26
27	10	9	9	27
28	10	10	9	28
29	11	10	10	29
30	11	11	10	30
31	12	11	11	31
32	12	12	11	32
33	13	12	12	33
34	14	13	12	34
35	14	13	13	35
36	15	14	13	36
37	16	15	14	37
38	17	16	15	38
39	18	16	16	39
40	19	17	16	40
41	21	18	17	41
42	23	20	18	42
43	25	21	19	43
44	27	23	21	44
45	30	24	22	45
46	33	27	24	46
47	38	29	26	47
48	42	32	28	48
49	49	35	30	49
50	59	40	33	50
51	—	49	41	51
52	—	57	46	52
53	—	67	52	53
54	—	—	59	54
55	—	—	70	55

तालिका-II

डाकघर बीमा निधि-4 अगस्त-2003 से लागू प्रीभियम

बंदोबस्ती बीमा

(रु. 5000/- के बीमा के लिए मासिक प्रीमियम)

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Posts)

(Directorate of PLI)

New Delhi, the 15th October, 2003

S.O. 3280.—In supersession of the Table I & II of Rule 5 of POIF Rules sent vide Notification No. 25-5/2003-LI dated 4/18-8-2003, the president is pleased to send revised Tables I & II of the aforesaid Rule for the age of entry between 19 & 55 years.

[No. 25-5/2003-LI]

V. PATI, Dy. General Manager

TABLE-I

Post Office Insurance Fund—Premiums in Force from the 4th August—2003

Whole Life Assurances

(Monthly Premiums for an Assurance of Rs. 5000/-)

Age at Entry (1)	Premium ceasing at the age of			Age at Entry (5)
	(2)	(3)	(4)	
55	58	60		
19	8	7	7	19
20	8	8	7	20
21	8	8	8	21
22	8	8	8	22
23	9	8	8	23
24	9	9	8	24
25	9	9	9	25
26	9	9	9	26
27	10	9	9	27
28	10	10	9	28
29	11	10	10	29
30	11	11	10	30
31	12	11	11	31
32	12	12	11	32
33	13	12	12	33
34	14	13	12	34
35	14	13	13	35
36	15	14	13	36
37	16	15	14	37
38	17	16	15	38
39	18	16	16	39
40	19	17	16	40
41	21	18	17	41
42	23	20	18	42
43	25	21	19	43
44	27	23	21	44
45	30	24	22	45
46	33	27	24	46
47	38	29	26	47
48	42	32	28	48
49	49	35	30	49
50	59	40	33	50
51	—	49	41	51
52	—	57	46	52
53	—	67	52	53
54	—	—	59	54
55	—	—	70	55

TABLE-II
Post Office Insurance Fund—Premiums in Force from the 4th August-2003
Endowment Assurances
(Monthly Premiums for an Assurance of Rs. 5000/-)

नई दिल्ली, 7 नवम्बर, 2003

का०आ० 3281.—डाकघर बीमा निधि नियमावली के नियम 10 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा 31-03-1999 को ग्रामीण डाकघर जीवन बीमा निधि की परिसंपत्तियों एवं देयताओं के बीमांक मूल्यांकन के आधार पर महानिदेशक, डाक मृत्यु अथवा परिपक्षता के कारण दावा बनी ग्रामीण डाक जीवन बीमा पॉलिसियों पर दिनांक 31-3-1999 को समाप्त वर्ष के लिए निम्नलिखित दरों पर साधारण प्रतिवर्ती बोनस की घोषणा करते हैं।

बीमा पॉलिसी का प्रकार

बोनस की दर

- | | |
|--|------------------------------------|
| (i) आजीवन बीमा | बीमा राशि के प्रति हजार पर 60/-रु. |
| (ii) बंदोबस्ती बीमा तथा प्रत्याशित बंदोबस्ती बीमा | बीमा राशि के प्रति हजार पर 50/-रु. |
| 2. बोनस की राशि में 50 पैसे या उससे अधिक भाग को अगले रुपए में पूर्णांकित किया जाएगा और 50 पैसे से कम भाग को छोड़ दिया जाएगा। | |
| 3. इसे वित्त सलाह (डाक) की डायरी सं. 2028 दिनांक 03-11-2003 के अंतर्गत प्राप्त सहमति से जारी किया जाता है। | |

[सं. 5-2/2003-04/एलआई]

वी. पति, उप महाप्रबंधक

New Delhi the 7th November, 2003

S.O. 3281.—In exercise of powers conferred vide Rule 10 of Post Office Insurance Fund Rules and on the basis of actuarial valuation of the assets and liabilities of the Rural Post Office Life Insurance Fund as on 31-03-1999, the Director General, Posts, is pleased to declare a Simple Reversionary Bonus on the Rural Postal Life Insurance Policies on their becoming claims, due to death or maturity at the following rates for the year ending 31-03-1999 :—

Type of Insurance Policy

Rate of Bonus

(i) Whole Life Assurance	Rs. 60/- per thousand of sum assured
(ii) Endowment Assurance and Anticipated Endowment Assurance	Rs.50/- per thousand of sum assured

2. The amount of Bonus involving a fraction of 50 paise or more shall be rounded off to the next higher rupee and fraction below 50 paise shall be ignored.

3. This issues with the concurrence of Finance Advice (Postal) vide their Diary No. 2028 dated 03-11-2003.

[No. 5-2/2003-04/LI]

V. PATI, Dy. General Manager

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 6 नवम्बर, 2003

का०आ० 3282.—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम 1948 (1948 का 41वां) को धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का प्रधान कौंसलावास, हयूस्टन में श्री दलबीर सिंह को 06-11-2003 से सहसयक कौंसली अधिकारी का कार्य करने हेतु प्राधिकृत करती है।

[सं.टी. 4330/01/2003]

उपेन्द्र सिंह रावत, अवर सचिव (कौंसल)

**MINISTRY OF EXTERNAL AFFAIRS
(C.P.V. Division)**

New Delhi, the 6th November, 2003.

S.O. 3282.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Shri Dalbir Singh, Assistant in the Consulate General of India, Houston to perform the duties of Assistant Consular Officer with effect from 06-11-2003.

[No. T. 4330/01/2003]

U. S. RAWAT, Under Secy. (Coms.)

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

(पी.एम.एस अनुभाग)

नई दिल्ली, 11 नवम्बर, 2003

का०आ० 3283.—दन्त चिकित्सक अधिनियम, 1948(1948 का 16) की धारा 10 की उपधारा 2 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय दन्त चिकित्सा परिषद् से परामर्श करने के बाद एतद्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है; नामतः

अनुसूची के भाग-I में क्रम संख्या 39 और उससे संबंधित प्रविष्टियों के साथने निम्नलिखित प्रविष्टियाँ जोड़ी जाएंगी, नामतः

39.	कुरुक्षेत्र विश्वविद्यालय, कुरुक्षेत्र, हरियाणा	मास्टर आफ डेंटल सर्जरी डी.ए.वी. सेंटिनरी डेंटल कालेज, यमुनानगर, हरियाणा के एम.डी.एस. छात्रों के संबंध में निम्नलिखित दन्त चिकित्सा अर्हताएं तभी मान्यता प्राप्त अर्हताएं होंगी यदि वे क्रमशः 19 जुलाई, 2003 और 25 जुलाई, 2003 को अथवा उसके बाद प्रदान की गई होंः	(क) एम.डी.एस. (पेडोडान्टिक्स) कुरुक्षेत्र विश्वविद्यालय, कुरुक्षेत्र, हरियाणा। (ख) एम.डी.एस. (पीरियोडान्टिक्स) कुरुक्षेत्र विश्वविद्यालय, कुरुक्षेत्र, हरियाणा।
		(i) एम.डी.एस. (पेडोडान्टिक्स) (ii) एम.डी.एस. (पीरियोडान्टिक्स)	

[सं.बी-12018/11/2003-पी.एम.एस.]

ए. के. सिंह, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE
(Department of Health)
(PMS Section)

New Delhi, the 11th November, 2003

S.O. 3283.—In exercise of the power conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

In Part-I of the Schedule against Serial Number 39, and the entries relating thereto, the following entries shall be added, namely :—

39. Kurukshetra University, Kurukshetra, Haryana.	Master of Dental Surgery The following Dental qualifications shall be recognised qualifications in respect of MDS students of D.A.V. Centenary Dental College, Yamuna Nagar, Haryana, when granted on or after 19th July, 2003 and 25th July, 2003 respectively : (i) MDS (Pedodontics) (ii) MDS (Periodontics)	(a) MDS (Pedodontics) Kurukshetra University, Kurukshetra, Haryana. (b) MDS (Periodontics) Kurukshetra University, Kurukshetra Haryana.
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[F.No. V-12018/11/2003-PMS]

A. K. SINGH, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 3 नवम्बर, 2003

का.आ. 3284.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा. 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इण्डिया के प्रबंधतत्र के संबद्ध निवाजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 247/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-10-2003 को प्राप्त हुआ था।

[सं. एल. 12025/16/2003-आई. आर. (बी. II)]

सौ. गंगाधरण, अध्यक्ष सचिव

MINISTRY OF LABOUR

New Delhi, the 3rd November, 2003

S.O. 3284.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 247/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 31-10-2003.

[No. L-12025/16/2003-IR (B-II)]

C.GANGADHARAN, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD

Present : Shri E. Ismail, B. Sc., LL.B.

Presiding Officer

Dated the 3rd day of October, 2003

INDUSTRIAL DISPUTE L. C.I.D. No. 247/2001
(Old I.D. No. 111/99 Transferred from Labour
Court-I), Hyderabad

BETWEEN :

Sri B. Ranga Reddy,
R/o Plot No. 123, CBI colony,
GSI post office,
Mansoorabad, Ranga Reddy District.Petitioner

AND

The Deputy General Manager,
Union Bank of India,
Regional Office, Jusbagh, Lata Complex,
2nd floor, Nampalli,
Hyderabad-500 001.Respondent

APPEARANCES :

For the Petitioner : M/s. G. Vidya Sagar, K. Udaya Sree, P. Sudheer Rao, E. Urmila & B. Shivakumar, Advocates

For the Respondent : M/s. C. R. Sridharan, G. Narendra Reddey & G. Rama Subba Rao, Advocates

AWARD

This case I.D. No. 111/99 is transferred from Labour Court-I, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-I.R. (C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 247/2001. This is a case taken under Sec. 2 A (2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The brief facts as mentioned in the petition are : That the Petitioner was working as sub-staff Dafty with the Respondent. It is mentioned that the Petitioner was appointed as sub-staff, Dafty on 27-2-1992 and while working as Dafty with the Respondent, he received dismissal order No. RO/PER/1949/96 dated 19-11-96. The allegation against him was that the Petitioner is entitled for house building loan entered into agreement dated 20-12-93 with one Sri A. Sivareddy for the purpose of house situated in Pirangipuram, Guntur District. The said agreement was enclosed to the loan agreement. He was sanctioned Rs. 1 lakh vide proceedings dated 30-3-1994 and additional loan of Rs. 75,000/- vide proceedings dated 30-4-94. The loan amount is repayable in 240 monthly equal instalments. Accordingly a sum of Rs. 1,75,000/- is given in favour of Sri A. Siva Reddy. The Petitioner's wife stood as guarantor for the above loan amount. The Petitioner has also given an undertaking dated 13-4-1994 for withdrawing the balance amount from his Provident Fund Account in the event the loan is not cleared. The Petitioner was placed under suspension vide order dated 8-1-96 that the loan could not be recovered from 1-1/2 years and it was found that on earlier occasion in the year 1987 he had applied for loan which was not sanctioned. But, he managed to get the housing loan fraudulently without any undertaking any transfer of property and that the said amount was utilized in the money lending business. Enquiry was conducted and he was dismissed. Hence, it is prayed that the order of dismissal dated 19-11-96 is wholly illegal and unjustified and consequently pass an award directing the Respondent to reinstate the Petitioner into service with back wages.

3. A counter was filed stating that the Petitioner while working at Sivamtagudem branch, he applied for a loan of Rs. 1,75,000/- for the purpose of purchase of House No. 2/62, Reddy Colony, Phirangipuram Mandal, Guntur District from one Mr. Avula Siva Reddy, value of which

was shown as Rs. 2 lakhs by submitting a purported sale agreement, encumbrance certificate, receipt in proof of tax paid, sanctioned/approved, plan, certificate of ownership issued by the MRO, certificate from Gram Panchayat, etc., as required by the Respondent bank for the purpose of processing and sanctioning the housing loan. Accordingly, Rs 1.75,000/- was paid to him. It was directed that an amount Rs. 556/- and Rs. 1,005/- be deducted from the month of May, 1994 towards the Model Housing Loan and Commercial Loan respectively, as stipulated in the sanctioned. However, the same were missing and there could not be any recovery from May, 1994 till October, 1995. Then, it was found that neither the Petitioner had made any payment nor created mortgage in favour of the bank. The Respondent bank has taken up the matter by way of a preliminary enquiry with the MRO, Phirangipuram, who declared that the purported certificate is concocted one and it does not bear the signature of Mr. Shaik Mira, the then MRO. In view of the discrepancies the Respondent enquired with the President of Gram Panchayat, Phirangipuram, who also confirmed that the certificate dated 21-1-94 is fabricated as there is no typewriter available in the office of the Gram Panchayat and the same is not signed by Sri D.V. Reddy. That the sanctioned plan was also not issued by them. The property in question belongs to one Mr. A. Siva Reddy who inherited his property from his father. The question of Mr. A. Siva Reddy acquiring any right over the said property did not arise. On further enquiry, it was revealed that the entire purported sale transaction was a sham as Sri A. Siva Reddy is the wife's brother of the Petitioner. Even the value of the old house has been inflated up only with a fraudulent and ulterior intention to avail Housing loan scheme. That in the year 1987 also he has applied for the loan on the same property but in view of the punishment imposed on him at the relevant time he had not been sanctioned. After, seven years, he got the housing loan sanctioned on the same property by producing false and fraudulent documents. That the Petitioner is engaged in money lending business at exorbitant rates and was doing so even with the staff members of the bank and the housing loan sanctioned to him was also put to use by the Petitioner in the money lending transactions without getting the property transferred in his name. An enquiry was conducted and he was rightly dismissed. As there is no evidence that the Petitioner utilized the amount in his money lending business. This Court by an order dated 28th October, 2002 held that the domestic enquiry is validly conducted.

4. The only point is whether any sympathy can be shown by invoking Sec. 11A. It is argued by the Learned Counsel for the Petitioner argued that after all the Petitioner has not duped. Only taken a housing loan which could not be fructified. Hence, at best he should have been put a penal interest and the dismissal is disproportionate to the alleged offence by him. He therefore prays that he may be directed to be reinstated with all terminal benefits.

5. The Learned Counsel for the Respondent argues that it is not a fit case to exercise powers under Sec. 11 A as he has duped the bank by showing his own brother-in-law, that is, wife's brother's house falsifying all the documents and not getting it executed. Hence, he is guilty of creating fabricated documents taking a loan under a concessional scheme. Hence, the order of the dismissal dated 19-11-1996 may be upheld.

6. It may be seen that the Petitioner was appointed as sub-staff on 27-2-82, then he was working as a 'Dastry' and was dismissed on 19-11-96. He has produced all false certificates and obtained the loan of Rs. 1,75,000/- and again did not pay even a single pie for quite some time. The bank has lost confidence in him. In fact, he has falsified all the documents and took a House loan. It may be seen no doubt no loss is caused to any body else. Yet, the Petitioner has availed the loan of Rs. 1,75,000-. He did not pay the loan at all. The property in question actually belongs to one Sri Siva Reddy who did not have any right in the said property. The said Siva Reddy is the wife's brother of the Petitioner. He has also inflated the value of the house. In fact he had tried once before also. In fact in the Enquiry Report he has stated that he would like to afford the Petitioner an opportunity for extenuating or mitigating circumstances under which proposed punishment should not be imposed on him and he was given an opportunity of personal hearing. But apparently, there is past conduct. There appears to be nothing taking the Arguments loan fraudulently and he has put in service from 1982 and dismissed on 19-11-96 that is 24 years of service. So, I am of the opinion that the order of dismissal can be converted into that of compulsory retirement. Hence, an award is passed directing that the Petitioner shall be treated as compulsorily retired on 19-11-96. However, the bank is entitled to withhold loan amount and charge interest as chargeable to non employees of the bank at the rates prevalent then for housing loan to the non employees of the bank that is, customers and adjust the same towards any benefits payable to the Petitioner with interest.

Award passed accordingly. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 3rd day of October, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 3 नवम्बर, 2003

का.आ. 3285.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सिडिकेट बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 183/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-10-2003 को प्राप्त हुआ था।

[सं. एल. 12025/17/2003-आई. आर. (बी. II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 3rd November, 2003

S.O. 3285.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 183/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workmen, which was received by the Central Government on 31-10-2003.

[No. L-12025/17/2003-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CULM-LABOUR COURT AT HYDERABAD

PRESENT:

SHRI E. ISMAIL, B.Sc., L.L.B., Presiding Officer

Dated the 22nd day of August, 2003

INDUSTRIAL DISPUTE L.C.I.D. No. 183/2002

(Old I.D.No. 90/2000 Transferred from Industrial
Tribunal-cum-Labour Court, Anantpur)

BETWEEN:

Smt Kattamanchi Jayaramireddy Rajakumari,
D.No. 10594, Karanala Street,
Kattamanche,
Chittoor-517001.Petitioner

AND

The Deputy General Manager,
Zonal Office,
Syndicate Bank,
Hyderabad. Respondent

APPEARANCES:

For the Petitioner : Sri M. Manohar Reddy,
Advocat

For the Respondent : M/s. K. Srinivasa Murthy,
P. Susheela M. Suguna,
C. Vijayashekhar Reddy,
L. Adibabu, B. Vijayakumar &
V. Ramesh, Advocate

AWARD

This case I.D. No. 90/2000 is transferred from Industrial Tribunal-cum-Labour Court, Anantpur in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18.10.2001 and renumbered in this Court as L.C.I.D.No. 183/2002. This is a case taken under Sec.2 A (2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No.8395 of 1989 dated 3.8.1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The brief facts as stated in the petition are: That the Petitioner was appointed as clerk in the Respondent bank. She was discharging her duties with honesty and to the satisfaction of all concerned. That she was issued with a chargesheet on 4.12.1997 with the following charge:

"That you have been working as a Clerk at our Chittoor branch since 22.3.1994 and while functioning as such you made credit entries of:

- (a) Rs.4000/- in SB A/c No. 18084 of Sri B. Ashok Kumar as on 20.11.96.
- (b) Rs.1700/- in SB A/c No. 15756 of Smt. G. Syamala on 6.9.96.
- (c) Rs.1300/- in SB A/c No. 18261 of Sri K. Damodar Reddy as on 22.10.96."

3. It is submitted that the SB ledgers and other records are in the custody of the concerned Personnel Department during the office hours and they will be kept in the cabinets after office hours. In fact, the Petitioner is not the concerned persons to deal with the disputed ledgers. Therefore, there is no scope for the Petitioner to meddle with the records. That MW1 in the enquiry has stated that the Petitioner has admitted the lapses and agreed to reimburse the amount, there is no written statement in this regard. MW1 has categorically admitted that there is no written admission from the Petitioner. Every day clerical work done by clerical staff and so checked and authenticated by the superiors. As per Ex. M1 the superior's authentication was available. Ex. M9, M10 and M19 were checked and authenticated as per evidence given by MW1. He has also categorically admitted that there was no financial loss for debit balances to be reimbursed. Though the Management witness stated that The Petitioner has destroyed the master sheet pertaining to S.B. account No. 15756, the Management has not produced any evidence in this regard. As the same was not available in the branch, MW2 concluded that the same is destroyed. It is an admitted fact that neither the bank nor the customer incurred any loss. In fact, she hails from a reputed family, her financial position is sound and there was no reason to commit the said acts. In the domestic enquiry, the material witnesses were not examined. The enquiry officer's findings are not proper. Hence, she may be reinstated with all back wags etc.

4. A counter was filed. The first point in the counter is that this Court has got no jurisdiction under Sec.2A(2). No doubt, the Petitioner was appointed as clerk in the Respondent bank. It was incorrect to say that she was doing her duties sincerely and honestly. The Petitioner has made fictitious debit and credit entries in the S.B. Account of the customers and exposed the Respondent bank to high financial risk. The Petitioner has also reimbursed the same of Rs.1300/- to the Respondent bank in respect of fictitious entries made by the Petitioner in S.B. Account N0.18261 of Sri K. Damodar Reddy. Respondent bank might not have been exposed to actual financial loss by the acts committed by the Petitioner but the act of falsifying the records and exposing the Respondent bank to serious financial risk shaked the confidence of the customers of the Respondent bank in the Petitioners integrity and honesty due to which the Respondent bank was forced to award the severe punishment of dismissal. Though the records of the bank were kept in the custody of higher authorities after and before the office hours, the nature of the work in the branch involved confidence between the staff members irrespective of their cadre and by indulging in objectionable acts as stated in the charge sheet. No doubt the work is to be checked by the supervisory staff, it is possible to check each and every entry made by the clerk particularly when it was done with fraudulent intention and by concealing facts. Even if it is assumed without admitting that the concerned supervisory staff failed to check the fraudulent entries made by the Petitioner that is not sufficient to absolve the fraudulent acts committed by the Petitioner. The Petitioner was a regular clerk in the concerned Department and she was responsible for preparing ledger sheets in the place of original without assigning any reason and without permission from the competent authority, that itself is sufficient ground that the Petitioner was aware about the destruction of records and to cover up the same the Petitioner has prepared a duplicate ledger sheet and has not given any explanation about the circumstances under which such duplicate ledger sheets were prepared and that itself is sufficient to prove the involvement of the Petitioner in destruction of the original ledger sheet.

5. It is submitted that though neither the Respondent bank nor the customers had incurred any loss due to the fraudulent entries made by the Petitioner, but such acts shaked the confidence of the Respondent in Petitioner's integrity and honesty and thus the Petitioner has become unreliable and undependable. The Petitioner's plea that she has very well to do family and the fraudulent entries made by the Petitioner are meagre to the status of the Petitioner is irrelevant. It is sufficient she made false entries and exposed the bank to high risk. That Respondent bank is public sector financial institution dealing with public money and therefore cannot be accepted to continue in it's employment the employees like the Petitioner. The confession that the dismissal awarded

is disproportionate to the gravity of misconduct is denied as the bank lost confidence in her integrity and honesty. Arguments were advanced on the validity of domestic enquiry and this Court by its order dated 3.3.2003 held that the domestic enquiry is validly conducted.

6. Arguments were advanced by both the Counsels. It is argued by the Learned Counsel for the Petitioner that the Petitioner has been working sincerely and all the alleged fictitious entries said to have been made by the Petitioner is of Rs.4800/-, Rs.1700/- and Rs.1300/. So in all Rs. 7800/- out of which the bank did not suffer any financial loss. No doubt, MW1 during the enquiry has admitted the lapses and agreed to reimburse the amount. There is nothing in writing in this regard. MW1 has categorically admitted during the enquiry in the cross examination that there is no admission from the delinquent. It has also come in the evidence that neither the bank nor the customers have incurred any loss and the Petitioner hails from a reputed family, her financial position is sound and there is no need for her to commit the acts as alleged. Any way, he submits that the punishment of dismissal is disproportionate to the alleged misconduct. He therefore prays that she may be reinstated with back wages.

7. It is argued by the Learned Counsel for the Respondent that though the Respondent bank might not have been exposed to actual financial loss all the acts committed by the Petitioner, the acts of falsifying the records and exposing the Respondent bank to serious financial risk shaked the confidence of the Respondent bank in the Petitioner's integrity and honesty and the Respondent is forced to award serious punishment of dismissal. He also agreed that the customers also have not incurred any loss and the question whether the amounts are given or not is not immaterial. Hence, he submits that the dismissal order may be confirmed.

8. It may be seen that the total amount involved is Rs.7800/- and she has repaid the amount and there is no loss financially or other wise either to the Customers or to the Respondent bank, suppose it is concluded that she must have received the amount from customers and misappropriated the same. I have held that the domestic enquiry is validly conducted. No doubt, wherein there is financial dishonesty, the amount is immaterial. But here we see that actually, there is no financial loss either to the customers or to the bank. I do not know the number of years of service she has put in because no where it is given. Neither in the petition nor in the enquiry as to when she has worked as a clerk. But seeing that she is aged about 45 years by now she might have put in atleast 15 to 20 years of service. Hence, actually there is no loss either to the customers or to the bank as admitted in the counter that the bank has only lost confidence in the Petitioner's integrity and honesty and hence, I cannot take the risk of exposing the customers of the bank of any loss in future. This time

there is no loss, in future there may be losses. But, invoking powers under Sec. II A of the I.D. Act, "the order of dismissal dated 23-2-99 is modified into one of compulsory retirement on 23.2.99".

Award passed accordingly. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me in the Open Court on this the 22nd day of August, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL	NIL
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Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 4 नवम्बर, 2003

का.आ. 3286.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधनत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या एल.सी.आई.डी. 156/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-11-2003 को प्राप्त हुआ था।

[सं. एल.-12014/6/2003-आई.आर. (बी. I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 4th November, 2003

S.O. 3286.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. L.C.I.D. 156/2002) of the Central Government Industrial Tribunal/Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 03-11-2003.

[No. L-12014/6/2003-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD

PRESENT:

SHRI E. ISMAIL, B. SC., L.L.B., Presiding Officer

Dated the 18th August, 2003

INDUSTRIAL DISPUTE No. I.C.I.D. No.

156/2002

(Old I.D. No. 259/2000 transferred from Industrial Tribunal-cum-Labour Court-I, Guntur)

BETWEEN:

Sri B. Srinivasa Rao,
S/o Subba Rao, Bothvanipalem,
H/o Thallapalem Post,
Bandar Mandal,
Krishna District.

....Petitioner

AND

1. The Chairman,
State Bank of India,
Central Office, Mumbai.
2. The Chief General Manager
(Personnel), State Bank of India,
Bank Street, Hyderabad.
3. The Regional Asst. General Manager
State Bank of India, Zonal Office,
Vijayawada Zone, Vijayawada.
4. The Branch Manager,
State Bank of India,
Machilipatnam Branch.Respondent

APPEARANCES:

For the Petitioner : Sri S. Adinarayana, Advocate

For the Respondent : M/s 'B. G. Narendra Reddy & B. V. Chandra Sekhar Advocates

AWARD

This is a case taken under Sec. 2 A (2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others by the Industrial Tribunal-cum-Labour Court, Guntur and in view of Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR (C. II) dated 18-10-2001 this case has been transferred to this Tribunal bearing no. I.D. 259/2000 which was numbered in this Court as L.C.I.D. No. 156/2002 and notices were issued to the parties.

2. Inspite of several adjournments given from 12-6-2002 for enquiry of the Petitioner for four adjournments including 18-8-2003 the petitioner has not turned-out. Inspite of number of Adjournments the petitioner has failed to produce any evidence in support of his claim. Petitioner's counsel reports not pressed. Petitioner called absent. There is nothing on record to substantiate the case of the Petitioner. Therefore, it is held that the petitioner is not entitled to any relief.

Accordingly a 'Nil' Award is passed, Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 18th day of August, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 4 नवम्बर, 2003

का.आ. 3287.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिमी रेलवे, (कोटा) के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट (संदर्भ संख्या 44/88) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-11-2003 को प्राप्त हुआ था।

[सं. एल.-41012/7/84-आई. आर. (बी. I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2003

S.O. 3287.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D., No. 44/88) of the Central Government Industrial Tribunal/Labour Court, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway, Kota and their workman, which was received by the Central Government on 03-11-2003.

[No. L-41012/7/84-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NEW DELHI**

Présiding Officer : SHRI B. N. PANDEY,

I. D. No. 44/88

Shri Anil S/o Dashrath
Divisional Secretary,
Paschim Railway Karamchari
Parishad, Kota
Versus
The Executive Engineer (S&C) I,
Management
Western Railway, Kota
AWARD

The Central Government in the Ministry of Labour
Vide its Order No. L-41012(7)/84-D.II(B) dated 12-12-84
has referred the following industrial dispute to the Tribunal
for adjudication :—
Whether the action of the Executive Engineer II
(R.E.) Western Railway, Kota in removing

Shri Anil S/o Dashrath from service w.e.f. 21-10-83 is justified? If not, to what relief is the concerned workman entitled for?"

2. The case was fixed for arguments. None is appearing on behalf of the workman for the last five adjournments while Shri H. L. Nanda was present on behalf of the management. Today none appeared on either side. Hence reference is decided for want of prosecution and accordingly, 'No Dispute Award' is passed.

Dated : 15-9-2003. B. N. PANDEY, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2003

का.आ. 3288.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिमी रेलवे के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/26/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-11-2003 को प्राप्त हुआ था।

[सं. एल.-41012/274/99-आई. आर. (बी.-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2003

S.O. 3288.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/26/2000) of the Central Government Industrial Tribunal/No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway, Mumbai and their workman, which was received by the Central Government on 03-11-2003.

[No. L-41012/274/99-IR (B-I)]
AJAY KUMAR, Desk Officer**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT:**

SHRI S. N. SAUANDANKAR, Presiding Officer

Reference No. CGIT-2/26 of 2000

Employers in Relation to the Management of
Western Railway, Mumbai

The Chief Workshop Manager,
Western Railway,
Carriage Workshop,
N. M. Joshi Marg, Lower Parel,
Mumbai-400013.

V/s.

THEIR WORKMEN

The Divisional Secretary,
Paschim Railway Karamchari Parishad,
1st Floor, Chhapra Building,
R. K. Vaidya Marg,
Near Plaza Cinema, Dadar (West),
Mumbai-400028.

APPEARANCES:

For the Employer	: Ms. D. Fernandes, Advocate holding for Mr. Suresh Kumar.
For the Workmen	: Mr. M. B. Ancham, Advocate.

Mumbai, dated 10th September, 2003

AWARD**Part-II**

By the interim Award dated 18-7-2002 this Tribunal held that the domestic inquiry conducted against the workman Shiv Singh was against the principles of natural justice and fair play thereby vitiates and therefore the management Western Railway was directed to lead evidence to justify its action of termination of the workman from the services as Bungalow Peon w.e.f. 14-11-1997 in the light of Issues Nos. 5 & 6.

2. The case of Union is that workman Shiv Singh was working as Bungalow Peon in the bungalow of the Chief Works Manager, Western Railway, Carriage Workshop, Lower Parel. He had applied for leave for twelve days from 10-5-1997 to 21-5-1997 and when he came to join he was not allowed to resume duty which is contrary to the provision of the Industrial Disputes Act and hence illegal. Management, Western Railway opposed the same contending that the workman did not report to work, consequently he was marked absent and that his absence being unauthorised, he was terminated under the Railway Service Rules.

3. As stated above, domestic inquiry conducted against the workman held vitiated consequently to prove the action of termination of workman based on the inquiry report Chief Office Superintendent Mr. Worlikar filed affidavit in lieu of Examination in Chief (Exhibit-29) and the management closed oral evidence vide purshis (Exhibit-33). In rebuttal, workman filed affidavit (Exhibit-34) and closed oral evidence vide purshis (Exhibit-35).

4. Management, Western Railway filed written submissions (Exhibit-36) and the Union/Workman (Exhibit-37). On perusing the record and hearing the Learned Counsels, I record my findings on the issues No. 5 & 6 for the reasons mentioned below :

Issues	Findings
5. Whether the action of the management of Western Railway in terminating the services of Shri Shiv Singh, Bungalow Peon w.e.f. 14-11-1997 is legal and justified?	Action is neither legal nor justified.
6. What relief the workman is entitled to?	A per order below.

REASONS

5. According to Chief Office Superintendent Mr. Worlikar workman was removed from service for his unauthorised absence from 10-5-1997 to 16-6-1997. He disclosed that workman was marked absent in the muster roll for the said period on the instructions of his superiors. It is significant to note that Mr. Worlikar in his cross-examination para 11 clearly admitted that workman had given application for leave for the above said period. Workman's case is that he had applied for 12 days leave from 10-5-1997 to 21-5-1997 and when he came for duty he was not allowed to join. Worlikar concedes that workman had signed in the muster from 22-5-1997 to 26-5-1997. This shows that workman reported to duty after the leave period from 22-5-1997, however he was admittedly refused to give work. Worlikar clearly pointed out that though workman worked he was marked absent. Under these circumstances hardly lie in the mouth of management that workman was at fault, warranting his removal. On perusal of the record it is seen the Railway officials with utter disregard to the service rules, arbitrarily refused to give the work to the workman who was in regular employment of Railway. Evidence of Mr. Worlikar itself shows the management's action of termination of workman is wholly illegal and unjustified and consequently he deserves to be reinstated in service with full back wages. Issues are answered accordingly and hence the order :

ORDER

The action of the management of Western Railway in terminating the services of workman Shiv Singh, Bungalow Peon w.e.f. 14-11-1997 is neither legal nor justified.

Management is directed to reinstate the workman in service with continuity and full back wages.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2003

का.आ. 3289.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे (मुम्बई) के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/72/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-11-2003 को प्राप्त हुआ था।

[सं. एल.-41012/34/2000-आई. आर. (बी.-१)]

अजय कुमार, हैस्क अधिकारी

New Delhi, the 4th November, 2003

S.O. 3289.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGITI-2/72/2000) of the Central Government Industrial

Tribunal/Labour No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway, Mumbai and their workman, which was received by the Central Government on 03-11-2003.

[No. L-41012/34/2000-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT: Shri S.N. Saundarkar,
Presiding Officer

Reference No. CGIT-2/72 of 2000

Employers in Relation to the Management of
Central Railway, Mumbai

The Senior Divisional Mechanical Engineer (D),
Kurla Diesel Loco Shed,
Central Railway,
Mumbai-400024

V/S

THEIR WORKMEN

Shri Sagarmal Gujarathi,
Century Rayon Harijan Chawl,
Old 'C' Type, Room No.36,
Ulhasnagar-1,
Dist. Thane.

APPEARANCES :

For the Employer	:	Ms. D. Fernandes Advocate holding for Mr. Suresh Kumar.
For the workmen	:	Mr. K.R Yelwe, Advocate

Mumbai, dated 16th September, 2003

AWARD

PART-I

The Government of India, Ministry of Labour by its Order No. L-41012/34/2000/IR(B-I) dated 3/16-8-2000 in exercise of the powers conferred by clause (d) of Sub section (1) and Sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Senior Divisional Mechanical Engineer (D), Kurla Diesel Loco Shed, Mumbai by dismissing the services of Mr. Sagarmal Gujarathi, Ex-Safaiwala w.e.f.

20-4-1998 is justified? If not, what relief the workman is entitled?"

2. Workman Shri Gujrathi was appointed as substitute Safaiwala in 1980 and was regularised from 30-3-1982 in the office of Assistant Mechanical Engineer, Kurla Diesel Loco Shed, Kurla. Vide claim statement (Exhibit 6) workman averred that he worked sincerely and efficiently however unfortunately during the period from 12-5-1993 to 15-6-1995 and again from 16-5-1996 to 2-7-1996 he could not attend duties due to illness of his wife and children and that his aged mother was also ailing and that he had to take leave to look after them. It is pleaded that as he remained absent he was suspended from 10-12-1997 by the order of the Assistant Mechanical Engineer (D) however ten days thereafter his suspension was revoked and was taken on duty and that domestic inquiry was initiated against him. It is contended that management Railway department issued charge-sheet on his absence for the period as above however he being poor and belongs to weaker section without holding proper inquiry and giving him opportunity based on the report dated 14-1-1998 management dismissed him from service w.e.f. 20-4-1998. It is contended that workman had tried to seek redress from the higher authorities but in vain therefore he contended inquiry being not fair be set aside directing the management to reinstate him in service.

3. Management Railway department resisted the claim of workman vide Written Statement (Exhibit-10) contending that Railway is not an industry and that Gujrathi is not a workman within the provisions of the Industrial Disputes Act. It is further contended that since the Union of India has not been made party the reference suffers from non-joinder of necessary parties and averred that the Central Administrative Tribunal is the competent authority and not this Tribunal. According to management workman remained absent from 17-5-1993 to 15-6-1995 for which he was given chargesheet dated 23-8-1995 and again he remained absent from 16-5-1996 to 2-7-1996 and for that he, was issued chargesheet dated 19-7-1996. However, workman though received the chargesheet remained absent who did not produce medical certificate for the alleged illness of his family members and therefore his absence being unauthorised his services were terminated by the order dated 20-4-1998 and that appeal and the mercy petition preferred by him were turned down vide order dated 15-10-1998 & 10-4-1999. It is contended that inquiry being fair and proper and the findings not perverse and that the Railway is not an industry and that the C.A.T. is the competent forum, therefore, the reference be dismissed, being devoid of substance.

4. By Rejoinder (Exhibit-13/14) workman reiterated the recitals in the Claim Statement denying the averments in the Written Statement.

5. On the basis of the pleadings Issues were framed at Exhibit-15 and in the context of preliminary issues workman Gujrathi filed affidavit in lieu of Examination in Chief (Exhibit-18) and closed evidence orally on 8/4/03 and that in rebuttal, S. D. Pawar, OS-1 filed affidavit (Exhibit-22) and the management closed oral evidence vide purshis (Exhibit-23).

6. Workman filed written submissions (Exhibit-24) and the Railway administration (Exhibit-25). On hearing both the counsels, perusing the record, written submissions I record my findings on the following issues for the reasons mentioned below:

Issues	Findings
1. Whether the domestic inquiry conducted against the workman was as per the principles of natural justice?	Yes
2. Whether the findings of the Inquiry Officer are perverse?	No
3. Whether the management of Railway is an industry as defined in Section 2 (j) of the Industrial Disputes Act?	Yes
4. Whether the Tribunal has jurisdiction to decide the reference as averred in para 4 of the Written Statement?	Yes

REASONS

7. At the outset the Learned Counsel Ms. Fernandes for the Railway administration submits that Railway is not an industry within the definition of Section 2 (j) of the Industrial Disputes Act, this Tribunal has no jurisdiction to entertain and adjudicate the reference. The Learned Counsel Ms. Fernandes inviting attention to the Written Statements para 4 submits that the Central Government had enacted the Administrative Tribunal Act, 1985 which covered the employees of the Railway and that the service conditions are governed under the Central Rules and therefore the CAT has jurisdiction and not the Industrial Tribunal. It is well settled legal position that Railway is an industry. His Lordship of Bombay High Court in Writ Petition No. 1751 of 1991 by the Order dated 11-10-2000 while deciding the applications filed against the Railway Department under Section 33 C (2) of the Industrial Disputes Act clearly ruled that Railway is an 'industry'. Recently in Writ Petition No. 1728 of 1998 in the matter of Western Railway V/s. Virendra Kumar dated 12-6-2003 Hon'ble High Court directed the Railway administration to pay overtime allowance to the workers. In view of the rulings referred to above it is apparent that the Railway is an 'industry' and that Gujrathi is a workman, consequently this Tribunal has jurisdiction in width to entertain and adjudicate the same. Issues No. 3 & 4 are answered accordingly.

8. So far the domestic inquiry is concerned Their Lordships of the Apex Court in Sur Enamel and Stamping Works V/s. Their Workmen 1963 II LLJ SCC 367, ruled that enquiry cannot be said to have been properly held unless:

- (1) the employee proceeded against has been informed clearly of the charges levelled against him;
- (2) the witnesses are examined-ordinarily in the presence of the employee in respect of the charges;
- (3) the employee is given a fair opportunity to cross examine the witnesses;
- (4) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter; and
- (5) the Inquiry Officer records his findings with reasons for the same in his report.

According to workman he was absent due to illness of his family members however inspite of that domestic inquiry was conducted against him. He disclosed that said enquiry was held in his absence Ex-parte and that being against the principles of natural justice inquiry needs to be set aside. He disclosed that due to illness of his family members he was confused and mentally upset therefore, could not intimate the authorities about his absence and without considering that the Inquiry Officer held that he was unauthorisedly absent, consequently inquiry is not fair. Management witness Mr. Pawar, OS-1 refuted the statement of workman stating that he did not participate in the inquiry inspite of receiving the notices. Therefore, the Inquiry Officer had no alternative but to report on 20-1-98 and that based on the inquiry report the Disciplinary Authority for unauthorised absence terminated the workman. The Learned Counsel Mr. Yelwe submits with force that for the absence the imposed punishment of dismissal upon the workman is harsh. However this aspect cannot be considered in this interim Award and that relevant to see whether the inquiry is fair and proper.

9. It is significant to note that workman admits in cross-examination para 17 that he had received a standard form No.17 at pg.53/Ex-16, copies pg. 16, 29, 33-35/Exhibit 16 which mention on the inquiry and the findings recorded by the Inquiry Officer and the action taken in that context by the Disciplinary Authority which action was confirmed by the Higher authority. Infact, in the inquiry the point was as to whether the workman remained absent unauthorisedly. Admittedly workman was absent and that he did not furnish medical certificate on the illness of his family members, which clearly indicative to show that his absence was unauthorised therefore, there is no meaning in saying that inquiry was improper. Considering the inquiry proceedings (Exhibit-16) in the light of the rulings

in so far as domestic inquiry and in the context of the facts on record, it can safely be said that inquiry was fair and proper and that findings of the Inquiry Officer since based on the evidence and record, are not perverse. Issues 1 & 2 are therefore, answered accordingly and hence the order:

ORDER

The domestic inquiry conducted against the workman was as per the principles of natural justice.

The findings of the Inquiry Officer are not perverse.

S.N. SAUNDANKAR, Presiding Officer.

नई दिल्ली, 4 नवम्बर, 2003

का.आ. 3290.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या एलसीआईडी-154/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-11-2003 को प्राप्त हुआ था।

[सं. एल.-12014/7/2003-आई. आर. (बी.-I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 4th November, 2003

S.O. 3290.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. LCID 154/2002) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 03-11-2003.

[No. L-12014/7/2003-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT:

SHRI E. ISMAIL, B. Sc., L.L.B., Presiding Officer

Dated the 18th day of August, 2003

INDUSTRIAL DISPUTE L.C.I.D. No. 154/2002

(Old I.D. No. 260/2000 transferred from Industrial Tribunal-cum-Labour Court, Guntur)

BETWEEN:

Sri K. Ramaswamy,
S/o Bogesu,
Pranitha Apartments,
Municipal Employees Colony,
Vijayawada-2.
Krishna District.Petitioner

AND

1. The Chairman
State Bank of India,
Central Office, Mumbai.
2. The Chief General Manager
(Personnel), State Bank of India,
Bank Street, Hyderabad.
3. The Regional Asstt. General Manager,
State Bank of India,
Zonal Office, Vijayawada Zone.
Vijayawada.
4. The Branch Manager,
State Bank of India,
Kalidindi Branch,
Krishna District.Respondent

APPEARANCES:

For the Petitioner : Sri S. Adinarayana, Advocate

For the Respondent : M/s B.G. Ravindra Reddy
& B.V. Chandra Sekhar,
Advocates.

AWARD

This is a case taken under Sec. 2 A(2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others by the Industrial-Tribunal-cum -Labour Court, Guntur and in view of Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 this case has been transferred to this Tribunal bearing No. I.D. 260/2000 which was numbered in this Court as L.C.I.D. No. 154/2002 and notices were issued to the parties.

2. Inspite of several adjournments given from 12-6-2002 for enquiry of the Petitioner for four adjournments including 18-8-2003 the petitioner has not turned-out. Inspite of number of adjournments the petitioner has failed to produce any evidence in support of his claim. Petitioner's counsel reports not pressed. Petitioner called absent. There is nothing on record to substantiate the case of the Petitioner. Therefore, it is held that the petitioner is not entitled to any relief.

Accordingly a 'Nil' Award is Passed/transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 18th day of August, 2002.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL	NIL
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Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 नवम्बर, 2003

का.आ. 3291.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन.सी.एल. प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पुणे (संदर्भ संख्या 23/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-11-2003 को प्राप्त हुआ था।

[सं. एल.-42012/220/2001-आई.आर. (सी.-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 5th November, 2003

S.O. 3291.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2002) of the Industrial Tribunal Pune (Maharashtra) as shown in the Annexure in the Industrial Dispute between the management of National Chemical Laboratory, and

their workman, received by the Central Government on 4-11-2003.

[No.L-42012/220/2001-IR (C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE SHRI J.L. DESHPANDE : INDUSTRIAL TRIBUNAL, PUNE

REFERENCE (IT) NO. 23 OF 2002

BETWEEN:

National Chemical Laboratory, Pashan, Pune (Maharashtra), Pune-411008.	...First Party
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AND

Their workmen.Second Party
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In the matter of	: Regularisation of the services of Shri Faraz A. Ansari, Mrs. Varsha Potnis, Miss. Kashmira M. Sangamnerkar and Mrs. Archana V. Apte.
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APPEARANCES: : Second Party : Absent
First party : Present

AWARD

6th October, 2003

(Order passed below Exh. O-1)

1. This is a reference made by the Central Government under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, for adjudication of the dispute between the management of National Chemical Laboratory, Pashan, Pune (Maharashtra), Pune.First Party, and their workmen, over the demand of regularisation of the services of Shri Faraz A. Ansari, Mrs. Varsha potnis, Miss. Kashmira, M. Sangamnerkar and Mrs. Archana V. Apte. as mentioned in the Schedule to the order of the Reference.

2. The second party workmen are not present since the last many dates. The demands made by the second party workmen, are not substantiated. Hence the reference is disposed of since the demands are not substantiated. Award accordingly.

J. L DESHPANDE, Industrial Tribunal.

नई दिल्ली, 7 नवम्बर, 2003

का. आ. 3292.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लाखनऊ (संदर्भ संख्या 157/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-11-2003 को प्राप्त हुआ था।

[सं. एल-22012/1/2001-आई आर (सी-II)]
एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 7th November, 2003

S.O. 3292.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 157/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of The Sr. Regional Manager, and their workmen, received by the Central Government on 6-11-2003.

[No. L-22012/1/2001-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT: LUCKNOW

PRESENT:

SHRIKANT SHUKLA
Presiding Officer

I. D. No. 157/2002

Ref. No. L-22012/1/2001/IR(C-II) Dated 9-9-2002

Between :

The State Secretary
Bhartiya Khadya Nigam Karmaehari Sangh
5-6, Habibullah Estate, Hazratganj
Lucknow

AND

The Sr. Regional Manager
Food Corporation of India
5-6, Habibullah Estate, Hazratganj
Lucknow

AWARD

The Government of India, Ministry of Labour vide their order No. L-22012/1/2001/IR(C-II) dated 9-9-2002 has been referred following issue for adjudication to this Tribunal:

“Whether the action of the management of Food Corporation of India in imposing penalty on Sh. P.N. Verma, AG(IM) of stoppage of two annual increments from his pay for the years, 1999 and 2000 without cumulative effect is legal and justified? If not to what relief the concerned workman entitled?”

2. Just one year has passed since the date in present industrial dispute was registered in the CGIT-cum-Labour Court, Kanpur. The notices were sent to the State Secretary, Bhartiya Khadya Nigam Karmaehari Sangh, Lucknow but no statement of claim has come forward and since no statement of claim has been filed on behalf of the State Secretary, Bhartiya Khadya Nigam Karmaehari Sangh, Lucknow, therefore the Sr. Regional Manager, Food Corporation of India, Lucknow has also not come forward with his written statement in respect of the issue referred to the Tribunal.

Thrice the adjournment applications received from Trade Union Leader but no statement of claim has been filed. The worker Sri P.N. Verma has not come forward to state that his two annual increments have wrongly and illegally have been stopped. In the circumstances it cannot be adjudicated upon whether the stoppage of two increments is illegal or unjustified. The issue is therefore answered accordingly.

30-10-2003

Lucknow

SHRIKANT SHUKLA. Presiding Officer

नई दिल्ली, 6 नवम्बर, 2003

का. आ. 3293.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे, मुम्बई, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. I, मुम्बई के पंचाट (संदर्भ संख्या सोजीआईटी-12/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-2003 को प्राप्त हुआ था।

[सं. एल-41011/09/96-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 6th November, 2003

S.O. 3293.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-12/1997) of the Central Government Industrial Tribunal No. I Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway, Bombay and their workman, which was received by the Central Government on 5-11-2003.

[No. L-41011/09/96-IR(B. 1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL NO. 1 MUMBAI
PRESENTShri Justice S.C. Pandey
Presiding Officer

REFERENCE NO. CGIT-12/1997

PARTIES: Employers in relation to the management
of Central Railway, Bombay.

And

Their Workmen

APPEARANCES:

For the Management : Ms. Fernandes, Adv.
 For the Workman : Mr. M.B. Anchan, Adv.
 State : Maharashtra

Mumbai, dated the 22nd day of October, 2003

AWARD

1. This is a reference made by the Central Govt. in exercise of its powers under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (the Act for short). The terms of reference are as follows :

“Whether the action of the Central Railway Administration while regularizing the 5 workmen, i.e. Sh. Jainath Ramnihar, Ram Narayan Chotelal Yadav, Sampat Shripat Pawar, Victor Francis and Anil Kumar H. Pandey as Khalasis instead of absorption in skilled category is justified? If not to what relief are the workmen entitled to?”

2. The Madhya Railway Karmachari Sangh (the Union) filed a Statement of claim on behalf of the five workmen named in the order of reference (henceforth the workman). That the workmen were appointed as casual labourers in the skilled category of workmen (Wireman) by the Central Railway Administrative in the electrical maintenance department of Central Railway at CST, Mumbai under the supervision of Electrical Superintendent maintenance to Wadi Bunder. They had undergone trade test for this purpose. The aforesaid five workmen were employed from the period given herein below :

Sr. No.	Name of the worker	Date of appointment
(i)	Anil Kumar H. Pandey	02-8-1977
(ii)	Victor Francis Gunna	05-8-1977
(iii)	Ramnarayan Chotelal Yadav	10-8-1977
(iv)	Sampat Shripat Pawar	10-12-1980
(v)	Jainath R. Nihar	06-4-1981

These person were working through out with at the top artificial breaks; but had attained the status of temporary workmen after working continuously for 120 days as per following chart.

	Date of attaining Temporary status
(i)	Anil Kumar H. Pandey 04-12-1980
(ii)	Victor Francis Gunna 04-12-1980
(iii)	Ramnarayan Chotelal Yadav 04-12-1980
(iv)	Sampat Shripat Pawar 10-4-1981
(v)	Jainath R. Nihar 04-8-1981

It was claim of the workmen the Central Railway administration accepted them as temporary workmen and paid them the wages in accordance with the wages payable to skilled workmen in the pay scale of Rs. 260—400. However, all these workmen were reverted to rank of Khalasis in the new category of Rs. 196—332 as per following chart.

	Reverted as Khalasis w.e.f.
(i)	Anil Kumar H. Pandey 14-6-1982
(ii)	Victor Francis Gunna 8-7-82
(iii)	Ramnarayan Chotelal Yadav 29-10-1981
(iv)	Sampat Shripat Pawar 1-4-88
(v)	Jainath R. Nihar 13-4-83

The workman claimed that reduction of their pay and posting them as Khalasis amounted to reversion. It was submitted that while ordering decasualization, the Railway Board had directed that upto 25% of the quota of skilled artisan should be filled by absorbing the unskilled, semiskilled and skilled artisans. It was stated that permanent post be created for absorption of those employees as regular employees. It was submitted the five workmen were not absorbed despite existence of posts of wiremen at Wadi Bunder. The juniors were absorbed in the skilled category. The claims of the five workmen were ignored.

3. In the written statement, it was seriously contended by the Railways are not an industry within the meaning of Section 2(J) of the Act. The workmen are governed by the rules framed by the Central Govt. and the proper forum was the Central Administrative Tribunal. It was seriously pleaded that workmen were not covered by Section 2 (S) of the Act. They were Govt. servants governed by the rules framed under Article 309 of the Constitution. The Union of India was a necessary party.

4. Apart from the aforesaid preliminary objection, it was stated that the Reference was delayed. The delay was fatal to the adjudication of the case and reference may be

rejected on that ground. It was also pleaded that the persons who are likely to be affected have not been made a parties to this reference. In its written statement the Railways did not deny that the five workmen were appointed as wiremen as pleaded by them. The stand of the Central Railway on merits appeared to be that the regularization can be done only in accordance with the rules. The workmen were regularized as Khalasis according to rules. They could be absorbed only as Khalasis. The decasualization was done in accordance with Annexure A dated 20-1-1985 (Annexure A) It was stated that the workmen did not fulfil the qualifications mentioned in that Annexure. Therefore, cannot be regularized in the category of wiremen.

5. In the rejoinder the same statement has been repeated as was given in the Statement of claim. It is denied that the Railways is not an industry and the workmen was not covered by the definition of the workmen under Section 2 (S) did not cover their case.

6. The argument that Indian Railways are not running an industry is frivolous. It has to be rejected merely by stating it. The decision of Supreme Court in the case of Bangalore Water Supply and Sewerage Board vs. Rajappa (1978) Lab 1C 467 has laid down the principles for judging if a particular establishment or an undertaking would be governed by Section 2(J) of the Act. The majority decision of Supreme Court laid down triple test (i) Systematic activity. (ii) Organized co-operation between the employer and employees. (iii) for production and or distribution of goods calculated to satisfy human wants and wishes. We need not go further than that. The Railways are a part of transport industry and provides service by carrying goods and passengers. They are definitely cater to material wants and wishes of human beings. The authority which performs those functions, which could be strictly called sovereign, could be exempted from the definitions of industry. It is obvious as daylight that running of the Railways cannot be called sovereign function of State or the Union of India. The Central Government is running the Railways as a welfare state in the interests of the public at large. The Indian Railway Act does not exempt it from the operation of the Act. Nor does the Act provides for such an exemption. The Section 14 of the Administrative Tribunal Act has to be read with Section 28 of that Act. Section 28 of the Act preserves the jurisdiction of Industrial Tribunal under the Act. That apart, there is sufficient indication in the Act itself for coming to the conclusion that Railways are an industry. The Act defines under 2 (o) of the Act a "railway company". Section 2(a) of the Act omitted by the Federal Railway Authority which were originally enacted because the industry is now being carried on by or under the authority of the Central Govt. Section 2(a)(i) defines Public Utility Service to mean interalia (any railway service or any transport service for the

carriage of passenger or goods by air. Therefore, in the first schedule other transport industries have been included in item No. 1 in accordance with Section 2 a (vi) of the Act. Since the Railway Service are already covered by Section 2 (a) (l) of the Act it is taken out from the word transport in the item No.1 of the First Schedule, specifically by words "Other than Railways" Thus it is clear that Railways are part of Transport Industry and cannot escape from the definition of industry under Section 2(J) of the Act. There is no evidence led to show that workmen are not covered by Section 2 (s) of the Act. The plea that the Union of India is a necessary party is without any substance. Nothing has been argued to substantiate the plea. Moreover, the Railways are fully represented. The technical plea cannot be entertained.

7. In the opinion of this tribunal, the question of delay cannot be taken up separately as there is no limitation presented in the Act for raising an industrial dispute. The decided cases indicate that delay is one of several factors to be considered by the tribunal at the time of granting relief. Therefore, this tribunal proceeds to decide the case on merits.

8. The workmen filed the affidavit of Ramnarayan Chhotelal Yadav. He was cross examined on behalf of the Railways. The Railways filed the affidavit of B. K. Panigrahi, Advocate. He as cross examined by the counsel for the workman.

9. The evidence of witness Ramnarayan indicates that Ramnarayan Chhotelal Yadav (i.e. himself) Anil Kumar Pandey, Victor Francis Gunna were working as casual labourer from the year 1977, whereas Jainath Nihar and Sampat Shripat Pawar were working from 1978 and 1980 as casual workers in Category-III of Wiremen. It was stated that all these workmen were recruited against the regular vacancies after trade test. They had obtained the temporary status by continuously working for 120 days. They were being paid wages of Rs.260—400 in Grade-III skilled category. It is alleged that as a consequence of decasualization they were absorbed in the posts of Khalasis in the pay scale of Rs.196—332 per month (unskilled category). Even though, they were required to perform the same work as they were doing as wiremen. It was stated by this witness that the Junior workmen, who were working as Khalasis were promoted earlier than the five workmen and the five workmen were promoted as wiremen later than them. The workman in cross examination admitted that the seniority list as a Khalasi was prepared according to the seniority from the date of joining that post after decasualisation. The promotions from 1982 to 1997 to the post of wiremen were done as per that list. It was stated by him that he had brought to the notice of the Union in the year 1990 that he was not promoted in accordance with date of his

joining service. The witness stated that the five workmen were not absorbed despite the existence of vacancies of wiremen.

10. Sh.B.K.Parugrahi in his affidavit did not dispute the fact that the workmen in question were recruited as wiremen in the electrical Engineering section as work charged wireman. These were posts in the skilled category. It was stated that they were regularized as Khalasis after the screening committee found them fit for the post. He stated that the post of wireman is filled by promotion from the cadre of khalasis to the extent of 50% to the extent of 25% from other feeder cadre by the employees holding ITI certificates in trades and 25% from open market. It was stated that in the year 1982, there was no scheme for regularizing skilled casual labour directly in skilled cadre of workmen. The Board circular dated 8-1-1981 was not applicable to the five workmen as they were not educationally qualified as per recruitment rules. It was stated that experience as wireman was not sufficient for their absorption in the category of wiremen. The witness admitted that wireman have to do electrical work of some kind. The witness admitted that the affidavit of Ramnayan yadav gave substantially correct dates. According to Exhibit M5 was more accurate. The witness evasively stated that he was unaware if Exhibit W6 was correct. He admitted that it was issued by the department. He admitted that the workmen who worked for 120 days in 'open time' attain the status of temporary workmen. The words 'open time' indicate these persons who did not work in construction activities. He stated that he would not be able to answer questions regarding Exhibit W9. He stated that Exhibit M4 was incomplete.

11. It appears to this tribunal from the document W6 that workmen Anilkumar Pandey joined on 2-8-77 Victor Francis Gunna on 6-8-77. Ramnayan Chhotelal Yadav on 10-8-77. Sampat Shripat Pawar on 6-4-1981. Jainath Ramnihar Jaiswal on 10-12-1982 as casual labour at Wadi bunder . They were engaged in the maintenance branch of the Electrical Engineering Deptt. The evidence of B.K. Parigrahi that the Exhibit M5 represented the correct position cannot be accepted. The Exhibit M5 is not an authentic document. It is not in dispute that workmen had worked continuously for 120 days as wiremen in the capacity of casual labour.

12. The workmen contend that as per Ex W1 issued by Railway Board provides that any person who had worked for 120 days continuously as a member for 120 days without break shall obtain the status of temporary workmen. It is not disputed by the witness examined on behalf of Railways that all these workmen worked continuously worked for more than 120 days as work charged wiremen. Therefore, the document W1 gives them status of temporary workmen. It is also contended that Ex W1 *inter alia* provides condition No.(viii) of the

heading F Absorption of Casual labour in regular vacancies. Provides that the skilled categories of casual workmen should be absorbed after qualifying in the trade test. The Condition No. (viii) of W1 reads as follows:

"Casual labour engaged in work charged establishments of certain Departments who get promoted to semi-skilled, skilled and highly skilled categories due to non- availability of departmental candidates and continue to work as casual employees for a long period shall straight away be absorbed in regular vacancies in skilled grades provided they have passed the requisite test to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semiskilled categories. These orders also apply to the casual labour who are recruited directly in the skilled categories work charged establishments after qualifying in the trade test.

13. The counsel for Railways was unable to say why this condition No. VIII reproduced above was not made applicable to five workmen who were work charged employees in the engineering department at Wadi bunder. There is no rebuttal that they had passed the trade test. Nor was witness able to say why they were absorbed as Khalasis despite the directions of the Board. This is clearly unfair labour practice. The workmen were working as wiremen as worked charged employees for considerable time before their individual posting as Khalasis. The circular of Railway Board was applicable to them. Therefore, they should have been considered for absorption as Wiremen. Instead they were absorbed as Khalasis. The workmen were not shown to be disqualified to be appointed as wiremen under any rule.

14. The sheet anchor of the argument on behalf Central Railways is that delay is fatal to the reference. It is also argued that number of workmen who have been promoted and made senior to the workman shall be affected. It is also argued that the affected workmen should have been made parties to the reference.

15. This tribunal is of the opinion that delay does not destroy the relief to be granted to the workmen. It is true that workmen woke upto their rights in the year 1990 when the matter was taken up by the Union. Thereafter, it appears from the affidavit and cross examination of Ramnayan Yadav who was re-examined to explain the delay, that the matter was pending since 1991 before conciliation authority and the Govt. Ramnayan Yadav explained the gap between 1982 to 1990, by stating that he had approached his Foremen when he was paid less who had promised to get the matter settled within three months. Looking to the entire circumstances, in the case this tribunal is of the view that delay is not entirely fatal to the case of workmen. Relief can still be granted to the workmen in accordance with law by moulding it to suit the circumstances of the case.

16. The learned counsel for the Central Railways has not been able to satisfy this tribunal how the workmen could be absorbed as Khalasis. The workmen have pleaded and proved that the 5 posts of wiremen were available at Wadibunder in the Engineering Department. The evidence of B.K. Parighrahi is only to the effect that workmen could not be absorbed as wiremen. They could only be absorbed as Khalasis. In absence any averment in the part of Sh. B. K. Parighrahi regarding the vacancies, the statement of Ramnayan Yadav is accepted. The workmen are, therefore, entitled to relief. It has not been shown that the post of wiremen is exclusively promotional post. On the other hand Sh. Parighrahi has stated that in this cadre direct appointment can be done to extent of 25%. Therefore, the case of Union of India vs. Motilal (1996) 33 ATC 304 does not directly apply. On the other hand, in a similar situation the Supreme Court has not interfered with direction of Administrative Tribunal to absorb casual workmen directly in class III post, the fact that despite it was impermissible to appoint persons directly in Class III. The case of Bhoopsingh vs. Union of India (1992) 21 ATC 675 (SC) is regarding delay in filing writ petition for reinstatement after 22 years of dismissal. This case is regarding unexplained delay in filing writ petition. It is distinguishable. None of the cases relied upon by the Learned counsel relate to jurisdiction of this tribunal in respect of labour dispute.

17. The result of the aforesaid discussion is that this reference is answered by passing an award in favour of workmen to the following:

(i) All these workmen shall be deemed to be absorbed as Wiremen respectively from the date of their absorption as Khalasis as claimed by them. Accordingly, they shall be deemed to be in the pay scale of Rs. 260—400 as it existed then (which has been subsequently revised to Rs. 950—1500). They shall be entitled to get the pay and allowances as admissible in that scale. The Central Railways are accordingly directed to calculate the arrears of pay and allowances as if the five workmen were absorbed as wiremen from the dates they were absorbed as Khalasis. They shall also be permitted to claim their seniority in the grade of wiremen from the date absorption indicated by this tribunal. Since the workmen have already been promoted as wiremen, the question of relief of promotion does not arise. Nor did the workmen pray for that relief. The workmen shall be entitled to claim seniority as if they were directly appointed to the posts of wiremen subject to condition that they shall not be entitled to claim right of promotion over the junior persons who have already been promoted to next cadre from the post of wiremen. The seniority of the persons already promoted shall not be disturbed. Accordingly, this reference is answered. No costs.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 6 नवम्बर, 2003

का. आ. 3294.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न रेलवे, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण नं. 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/53/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05-11-2003 की प्राप्त हुआ था।

[सं. एल-41011/36/99-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th November, 2003

S.O. 3294.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/53/2000) of the Central Government Industrial Tribunal No. 2 Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway, and their workman, which was received by the Central Government on 05-11-2003.

[No. L-41011/36/99-JR(B. I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

S. N. Saundankar, Presiding Officer

Reference No. CGIT-2/53 of 2000

EMPLOYERS IN RELATION TO THE MANAGEMENT OF WESTERN RAILWAY

The General Manager,
Western Railway,
Headquarter Building,
Churchgate,
Mumbai-400 020.

V/s.

Their Workman :

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
32-A, Chhapra Building, 1st Floor.
R. K. Vaidya Marg,
Nr. Plaza Cinema,
Dadar (West),
Mumbai-400 028.

APPEARANCES:

For the Employer : Ms. D. Fernandes, Advocate
holding for Mr. Suresh Kumar.

For the Workmen : Mr. M. B. Anchani, Advocate.
Mumbai, dated 25th
September, 2003.

AWARD

The Government of India, Ministry of Labour by its Order No. L-41011/36/99/IR(B-I) dated 13/14-03-2000/6-7-2000 in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Western Railway in not promoting the following 9 (nine) Mistry (Elec.) who are similarly placed employees under the same employer i.e. DRM/BCT is legal and justified? If not, to what relief the workmen are entitled to?"

- (1) Shri A. R. Govari
- (2) Shri Hansala Prasad
- (3) Shri N. V. Kadam
- (4) Shri Kantilal J.
- (5) Shri M.G. Mistry (G)
- (6) Shri Hridayaram S.
- (7) Shri Bishan Singh R.
- (8) Shri Babulal K. Vanmali
- (9) Shri R. R. Yadav.

2. Nine workers named in the schedule are working as Electrical Mistry under the Senior Divisional Electrical Engineer (Power) Western Railway, Mumbai. The Union vide claim statement (Exhibit 8) averred that earlier to Third Pay Commission the Electrical Mistles and Electrical Chargemen were having two separate scales however, as per the recommendations of the Fifth Pay Commission the scale of the Electrical Mistry was brought on par with that of Electrical Chargeman w.e.f. 1-1-1986. It is pleaded that even though the Electrical Mistles are entitled to promotion to the post of Assistant Electrical Foreman scale Rs. 550—750/1600—2660 alongwith Electrical Chargemen, the Electrical Mistles were denied promotion on the ground that the Electrical Mistles posts are non-selection posts and that of the Electrical Chargemen are of selection post. It is contended that the Union had challenged the said discrimination before the Central Industrial Tribunal No. I, Mumbai in Ref. No. CGIT-1/49 of 1990 and that the said Tribunal by the Award dated 22-6-1994 directed that the Mistry should be considered for promotion to the post of Assistant Electrical Foreman, on par with the cadre of Chargeman and that the said Award has been challenged before the High Court of Bombay in Writ Petition No. 488 of 1997 and that on the directions of the Hon'ble High Court, the Railway administration has implemented the said Award of the Central Government Industrial Tribunal No. I

from 10-11-1997 and promoted the Electrical Mistles under that Reference to the post of Assistant Electrical Foremen scale of Rs. 550—750/5500—9000. It is the contention of Union that workmen under reference belonged to the said category of Electrical Mistry and the same department and therefore denying them promotion is illegal and unjustified therefore the Railway administration be directed to promote the workmen under reference like similarly placed employees referred in Award dated 22-6-1994.

3. Management Western Railway resisted the claim of Union vide Written Statement (Exhibit 13) contending that the workers under reference being Civil Servants whose service conditions are governed under the constitution are not the workmen and that the object of the Railway being welfare and non-profit is not an industry under the provisions of the Industrial Disputes Act. It is averred that the Unions claim being ill founded be dismissed with costs.

4. By Rejoinder (Exhibit 16) Union reiterated the recitals in the claim statement denying the averments in the Written Statement.

5. On the basis of pleadings issues were framed at Exhibit 17 and in that context one of the workers viz. Kadam filed affidavit in lieu of Examination in Chief (Exhibit 21) and the Union closed oral evidence vide purshis (Exhibit 25). In rebuttal, Assistant Personnel Officer (Electrical) Mr. Panwar filed affidavit (Exhibit 26) and the management Western Railway closed oral evidence vide purshis (Exhibit 27).

6. Union filed written submissions Exhibit 28 and the management Railway Exhibit 29. On perusing the record, the written submissions and hearing the counsels, I record my findings on the issues for the reasons mentioned below :

Issues	Findings
1. Whether Railway is an 'industry' as defined under Section 2(j) of the Industrial Disputes Act ?	Yes.
2. Whether employees named in the schedule are workmen under Section 2(s) of the Industrial Disputes Act ?	Yes.
3. Whether the action of the management of Western Railway in not promoting the 9 (nine) Mistry (Elec.) who are similarly placed employees under the same employer i.e. DRM/BCT is legal and justified ?	No.
4. What relief these employees are entitled to ?	As per order below.

REASONS

7. At the outset the Learned Counsel Ms. Fernandes for the Railway administration submits that Railway is not

an 'industry' and that workers under reference are not 'workmen' under the provisions of the Industrial Disputes Act, hence, this Tribunal has no jurisdiction to entertain and adjudicate the reference. The Learned Counsel Ms. Fernandes submits that the Central Government had enacted the Administrative Tribunal Act, 1985, which cover the employees of the Railway and that the service conditions are governed under the Central Rules and therefore the Central Administrative Tribunal has jurisdiction and not the Industrial Tribunal. It is well settled legal position that Railway is an 'industry'. His Lordship of Bombay High Court in Writ Petition No. 1751 of 1991 by the Order dated 11-10-2000 while deciding the applications filed against the Railway Department under Section 33 C (2) of the Industrial Disputes Act clearly ruled that Railway is an 'industry'. Recently in Writ Petition No. 1728 of 1998 in the matter of Western Railway V/s. Virendra Kumar dated 12-6-2003 Hon'ble High Court directed the Railway administration to pay overtime allowance to the workers. In view of the rulings referred to above, it is apparent that the Railway is an 'industry' and that workers under reference are 'workmen', consequently this Tribunal has jurisdiction in width to entertain and adjudicate the same. Issues No. 1 & 2 are answered accordingly.

8. Once it is clear that workers under reference are 'workmen' and that Railway is an 'industry' point crops on whether the workmen are entitled to promotion like similarly placed workmen in Reference No. CGIT-1/49 of 1990 dated 22-6-1994. Assistant Personnel Officer (Electrical) Mr. Panwar admitted that the workers under reference are working as Electrical Mistry in Electrical Department whose promotion is by way of selection. He further admitted that the Electrical Mistris named in Reference No. CGIT-1/49 of 1990 dated 22-6-1994 were promoted as JE-I & II. On this back ground the Learned Counsel Mr. Anchani for the workers under reference submits that the Electrical Mistris who were party to the reference are promoted and that the workmen under reference similarly placed, are denied promotion only because they were not party in the said Award. He submits the Tribunal pointed out that in view of the recommendations made by the Fourth Pay Commission the two categories of Mistry and Chargeman have been brought on par and therefore the Mistry should be considered for promotion to post of AE-Foreman on par with the cadre of Chargeman. The Learned Counsel Ms. Fernandes holding for Mr. Suresh Kumar Advocate for the management pointed out that Writ Petition bearing No. 488/97 against the Award is pending in the High Court. Since as per the Award dated 22-6-1994 Railway administration promoted the Electrical Mistris as JE-I & II, the similarly placed workmen under reference are certainly entitled to promotion to Assistant Electrical Foremen. In this view of the matter, the management's action in not promoting the workers under reference is wholly illegal and unjustified. Issues are answered accordingly and hence the order.

ORDER

The action of the management of Western Railway in not promoting the 9 (nine) Mistry (Elec) who are similarly placed employees under the same employer i.e. DRM/BCT is neither legal nor justified.

Management Western Railway is directed to promote the workmen under reference like similarly placed employees in Award dated 22-6-1994 of Reference No. CGIT 1/49 of 1990.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 6 नवम्बर, 2003

का. आ. 3295.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, लखनऊ के पंचाट (संदर्भ संख्या 119/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05-11-2003 को प्राप्त हुआ था।

[सं. एल-41012/33/2001-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th November, 2003

S.O. 3295.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 119/2001) of the Central Government Industrial Tribunal / Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway and their workman, which was received by the Central Government on 05/11/2003.

[No. L-41012/33/2001-IR(B.I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT :

Shrikant Shukla, Presiding Officer

I.D. No. 119/2001

Reference No. L-41012/33/2001/IR(B-I)

Dt. 20-7-2001

Between :

Sri Rajinder Prasad
C/o Sh. Narain Das Bironia
R/o 167, Taksal
Jhansi-284001

AND

1. The Divisional Railway Manager (P)
Central Railway, Jhansi-284001.

2. The Dy. Chief Engg. (Const.)
Central Railway, Near Rly. Hospital
Jhansi-284001.

AWARD

Bharat Sarkar Shram Mantralaya, Ministry of Labour, New Delhi vide their Order No. L-41012/33/2001/IR(B-1) dated 20-7-2001 has referred following reference for adjudication to this tribunal :

"Whether the action of the management of Deputy Chief Engineer (Construction), Central Railway, Jhansi in terminating the services of Rajinder Prasad w.e.f. 2-5-76 is justified? If not, what relief the workman is entitled to?"

The worker's case in brief is that Sri Rajinder Prasad, who shall hereinafter be called as worker, was appointed as Casual Labour on 19-7-1972 and he was issued casual labour card No. 124135 under Jhansi Division Railway and he started working under I.O.W. (Doubling). Thereafter he worked at different places till 1-5-1976. He was entitled to obtain temporary status for which he represented time to time. During the tenure of his service, the Railway Administration issued various circulars for regularising the services in class IV category and he demanded to be regularised, but he was retrenched on 2-5-76. Worker was not informed the reasons of retrenchment nor he was given any notice. worker was not paid retrenchment compensation as well. On the other hand juniors to the worker named Haider Ali, Virendra Kumar and Kaimal are still engaged in service. Worker has prayed that his termination be rejected & should be reinstated with back wages and all consequential benefit O.P. has denied the claim of the workman in their written statement on the following grounds :

1. The worker has approached the Asstt. Labour Commissioner/Conciliation Officer in the year 2000-2001 in respect of alleged retrenchment dated 2-5-76, after a gap of 25 years & as such is barred by latches.
2. That as per Railway Board circulars, the records of casual labour are weeded out between 3 to 5 years and all the relevant records pertaining to alleged service is weeded out.
3. The construction is separate independent organisation and not under directly controlled by Divisional Railway Manager, Jhansi, but it controlled by Chief Engineer, Construction, Mumbai, as such there is no concern with Divisional Railway Manager, Jhansi, Divisional Railway Manager, Jhansi does not engage casual labour, but it is senior sub-ordinate to engages casual labour.
4. Worker was engaged as daily rated casual labour for 19-7-72 under the construction unit.

5. Construction unit used to utilise the casual labours from time to time on different works for completions of projects.
6. Worker did not work continuously from 19-7-72 to 1-5-76 as alleged by him. He was engaged in brief spells and after completion of the project he left the service of his own. During the entire period of service the worker did not complete 240 days continuously.
7. Due to non completion of required number of working days he could not be granted temporary status as such he is not entitled to benefits.
8. There was no scheme of regularisation in the year 1976.
9. The worker himself abandoned the service & he never returned. Had the worker been available his services could have been utilised in another project.
10. None of the juniors of the worker has been retained in service.

Worker did not file any document along with the statement of claim, but has filed following documents only after the opposite party denied the claim in written statement :

PAPER NO. 4

Sl. No.	Date	Detail
1.	19-07-72	Casual Labour Card No. 124135
2.	09-10-88	Railway Circular
3.	23-05-96	Railway Circular
4.	01-05-79	Representation
5.	11-05-82	Representation
6.	26-07-82	Representation
7.	26-03-87	Representation
8.	29-10-87	Representation
9.	03-05-88	U.P.C.
10.	12-09-88	Representation
11.	14-12-88	Representation
12.	06-11-89	Representation
13.	09-09-90	Representation
14.	—	Postal Receipt
15.	11-09-91	Representation
16.	12-09-91	Representation
17.	13-04-93	Representation
18.	21-01-99	Representation

Sl. No.	Date	Detail
19.	21-01-99	Representation
20.	16-02-99	Representation
21.	08-03-99	Answer letter
22.	15-06-99	Answer letter
23.	30-07-99	Answer letter
24.	23-08-99	Representation
25.	3-09-99	Answer letter
26.	17-09-99	Answer letter
27.	20-12-99	Representation
28.	27-01-99	Representation
29.	15-10-99	Copy of legal notice
30.	20-12-99	Representation
31.	09-12-99	Answer of legal notice
32.	08-03-2000	Answer of letter from DRM Office
33.	11-06-96	ID case No. 123/92 award given by CGIT, Kanpur
34.	18-05-99	W.P. No. 40252/97, orders passed by High Court

The opposite party has filed following copies of documents :

1. The Railway Board circular issued after 1976. Workman has filed his affidavit on the other hand O.P. has filed the affidavit of Asstt. Engineer Sri Dapale Chandra Patil.

Heard learned representative of the parties and perused record.

Worker has filed photo copies of casual labour record paper Nos. 4/3 to 4/6 which shows following entry :

S. No.	Period of Assignment	Nature of assignment	Signature & Desgn. of Supdt. with date
From	To		
1.	19-7-72	4-10-72	C.L. Kh Sig. not legible
2.	19-4-73	18-9-73	Kh seal AE, Const. Jhansi
3.	26-9-73	18-10-73	C.L. Kh
4.	6-12-74	2-5-76	C.L. Sig. not legible Deptt. Seal not legible

Worker has filed the copy of following representations.

1. Dated 1-5-79 after 3 years of alleged termination requesting the AEM (Construction) Doubling, C. R. Jhansi to produce him an opportunity to serve as it is learnt that those who have worked are offered permanent appointment.

2. Dated 11-5-82 addressed to GM, CR, Bombay VT requesting him to take him back as regular employee.
3. Dated 25-7-82 addressed to D and C.R. Jhansi requesting him to give an opportunity to the workman as regular worker.
4. Dated 29-10-87 addressed to AE (Construction) CR, Jhansi for entering workers name in the Register, so that he may again be taken in job.
5. Dated 14-12-88, reminding the Asstt. Engineer (Construction) C.R. Jhansi, reminding workers previous letters 1-5-79, 26-3-87, 29-10-87, 2-5-88, 12-9-88.
6. Dated 6-11-89 reminding the Asstt. Engineer about worker letter 1-5-79, 26-3-87, 29-10-87, 12-9-88, 14-12-88.
7. Dated 11-9-91 letter addressed to General Manager, CR, Bombay VT alleging that he has worked as casual labour without break for one year and remaining work in pieces and he has reminded his previous letter dated 11-5-82, 9-7-90. Also requested that he be inducted as regular employee.
8. Dated 12-9-91 letter addressed to Divisional Railway Manager, Jhansi reminding him about his previous letters 11-5-82, 25-7-82 again alleging that he has worked without break for one year, and remaining work in pieces and he be taken in employment as regular employee.
9. Dated 13-4-93 addressed to AE (Construction) requesting him to employ the worker as regular employee.
10. Dated 12-1-99 addressed to Sr. DPO, CR, Jhansi again requesting him to employ him as regular employee.
11. Dated 21-1-99 addressed to DRM to employ the worker as regular employee.

It is relevant to mention here that according to the copy of letter of Asstt. Engineer, CR, Jhansi addressed to DRM, Jhansi dated 15-6-91 has categorically stated that the worker has worked from 19-7-72 to 4-10-72, 19-4-73 to 18-9-73 and 26-9-73 to 18-10-73 as casual Khalasi and thereafter worker has not reported to his office for work nor he sent a letter. According to this letter the worker has worked 16 days in the year 1972, 5 month, 5 days, in 1973.

Question is whether the worker has worked as aforesaid or has worked as mentioned the casual labour service record.

Details of service records as far as it relates to work in IOW (Doubling) CR, Jhansi or concerned, is confirmed by the opposite party, but the details of work in (Const.)

W/s CR, Rly, Jhansi is not confirmed with regard to worker's engagement from 6-12-74 to 2-5-76. In this connection following facts and circumstances are note worthy :

- (a) Worker has not filed the service record at the time of filing statement, though notice required the worker to do so. It is only after the W.S. was filed the worker came forward and filed the rejoinder alongwith the photostat copies of the documents.
- (b) Worker has stated in para 5 of the statement of claim that he worked from 19-7-72 to 1-5-76 at various placed; of work. but he has not given details of places. It is concealment of facts that the worker has not given the details at various places, the O.P. was in a position to verify the correctness of the allegations.

If the documents filed by the worker are genuine. the facts which are made out from the letter as follows:

(1) Letter dated 1-5-79 does not allege that the worker was retrenched on 2-5-76. It only shows that the worker worked for 766 days and such others were taken on permanent service, he also requested that he be provided another opportunity where as if all the details of service record is counted, it comes out to be only 618 days. In the circumstances why the worker wrote letter dated 1-5-79, that he has 766 days? Worker ought to have written that he was retrenched and should have given the correct details. It is noteworthy that the worker worked only 194 days in IOW (Doubling), but which writing the letter to IOW(Doubling). CR, Jhansi he conceals this fact.

(2) After sending the first application, workers keeps silent for about 2 years and on 11-5-82 sent another Letter. In that letter he resiles from the working of 766 days and confirms himself to 700 days only. Here in, he alleges that he has continuously worked for one year that conceals relevant dates. In this application also he has not mentioned that he was terminated on 2-5-76. This letter is addressed to General Manager, Central Railway, Bombay V.T. Worker ought to have given details of the work done together with date, month and year with the allegations that he was terminated. An adverse inference could be drawn that he was not terminated on the alleged date and his allegation of 700 days works incorrect.

(3) On 25-7-82 he sends another letter to DS Central Railway. In this letter he states

again does not say that he was terminated on 2-5-76 and again he states that he worked for 700 days without furnishing the day and date. He prays for regular appointment.

- (4) After about 5 years he sends a letter to Asstt. Engineer (Construction) Central Railway, Jhansi, requesting thereby that his name be got entered in the live register. In this letter also he did not disclose the period during which he was employed in the Construction Division, Jhansi. Meaning there by his name was not entered in the live register maintained by the Construction Division also that he had no knowledge of the entry in the Service Records. Common inference shall be that the Service Record of the casual labour which worker has filed at a later stage was having no entry of working in the Construction Division till 26-3-87 when the said letter was written.
 - (5) Letter dt. 14-12-88 and 6-11-89 are in nature of reminder.
 - (6) Letter dated 7-7-80 was sent to the General Manager for regularising him from Temporary casual labour. This time as usual worker has not disclosed the fact that he was terminated and also not disclosed the date month and year of his engagement. This letters again followed by the letter dated 11-9-91 with the same request. In the subsequent letter he does not say that he has worked for 700 days and confines himself for working without break for one year and remaining in pieces. He still not states as to which year he continuously worked for continuous one year.
 - (7) Worker sends another letter dated 12.9.91 for the regularisation. Nothing new is stated in this letter which is addressed to DRM.
 - (8) 4 years after sending the letter to Asstt. Engineer (Construction Division), worker has written letter dated 13-4-93 for regularisation without mentioning a single word that he was terminated on 2-5-76 and has worked from such date month and year to such date and year. On 21-1-99 worker sent another letter to Sr. DPO, Central Railway for the same prayer followed by another letter dated 21-1-99.
 - (10) Ultimately the worker got written one letter through the Member of Parliament. Hon'ble M.P. has stated that the worker was terminated on 2-5-76. The letter dated 27-1-99 followed by reminder dated 16-2-99.
- O. P. has argued that the worker has never reported for work in the Construction Division of Railways.

He deserted the O.P. He has only prayed for regularising him as permanent railway servant. He has also relied upon. The Indian Railway Establishment Code Volume 1985 which defines Railway Servant and the term railway servant excluded casual labour. Unless a person is appointed by the authority to make appointments he can not be a member of service. On the contrary the worker was casual labour project as defined in Chapter XX which has follows :—

2001 (1) (b) casual labours are also engaged on Railways for execution of railway projects, such as new lines, doubling. Conversion, construction of buildings, track renewals Railway Relay Inter Locking Railway Electrification, setting up of new units etc. Casual labours regularised are referred to as project casual labour.

The management further laid down that the labours on projects who have put in 180 days of continuous employment on works of the same type are entitled for 1/30 of the minimum of the appropriate scale of pay plus DA and before giving the said benefit a preliminary verification in regard to age and completion of requisite number of days of continuous service should be done by the Asstt. Officer and the person should also be got medically examined and only if found fit he should be granted regular scale of pay. Even after granting the temporary status such casual labour do not become the regular employees.

Once an individual acquires temporary status after fulfilling the conditions, he acquires the status so long as he is in continuous employment on railways. In other words if he is transferred by the administration to work of different nature, he does not lose the temporary status.

Should it become necessary to engage additional casual labour, discharged casual labour who have not been re-employed they will be re-engaged against future requirements in order of priority on the basis or total period of service prior to their discharge. The unlike of fresh faces' are not permitted except prior personal approval of the General Manager has been obtained, power to accord such approval can not be delegated to lower level.

In rule No.2005 certain privileges are admissible to casual labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment as the case may be :

- (a) rights & benefits admissible to the railway servants as laid down in Chapter XXIII of the manual etc.
- (b) " Such casual labours who acquire temporary status will not, however, be brought on to the permanent or regular establishment are treated

as irregular employment or Railways until and unless they are selected through regular selection Board for Group 'D' Posts in the manner laid down from time to time subject to such order as the Railway Board may issue from time to time..... broken period.

- (c) no temporary post shall be created to accommodate such casual labour.... in the case of project casual labour.
- (d) Casual LaboursPermanent railway employee.
- (e) Casual Labour engaged..... purpose of hospital leave in terms of Rule 554-R-1 (1985 Edition).

Rule 2006

Absorption of Casual Labour in regular vacancies.

Absorption of casual labour in regular Group.

- (i) Employment may be completed in regular Group D employment may be considered in accordance with instructions issued by the Railway Board from time to time. Such absorption is, however, not automatic but is subject, inter alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway Administration.
- (ii) Casual Watermen for summer season shall be eligible for temporary status on completion of 120 days of continuous employment.

The learned representative of the worker has argued that the worker who has acquired temporary status can not be terminated. In the present case facts of the case are different. The worker himself has not alleged in the representatives. That he was illegally terminated. All along he has been pressing hard that his services should be regularised and he should be made regular employee. In none of letter he has written to the concerning officer that he was willing to work as casual labour temporary project and he was denied the job. The worker has himself deserted the employer, casual labour like any other labour is master of his own labour, if he does not want to serve the employer he can be asked to serve. From the records of case file, it is clearly made out that the worker never intended to work as casual labour. It is difficult to hold from the worker own evidence that he completed 180 days. Entry in Service Record 6-12-74 to 2-5-76 is not correct for the reasons discussed above but from the worker's own letters it could be inferred that the same is not correct. Even if it is presumed for a moment that the entry is correct

worker himself denied that status. He never challenged that he was ever terminated till the filing of claim before the court. The circumstances clearly prove that the worker himself did not like to work as casual labour and has been insisting for declaring him a regular employee of the Railway. He has been sitting all along 24 years without requesting the railways that he may be accommodated as casual labour and will wait for his term for regular employment after observing the formalities.

Worker has not explained as to why he did not challenge in case he was terminated on 5-2-76 for such a long term of 24 years. If he was aggrieved. No reasonable explanation given for such delay. O.P. has placed reliance on 2001 Supreme Court (L&S) 239 Indian Iron & Steel Co. Ltd. Vs. Prahalad Singh. In the present case it is alleged after a lapse of 24 years that the termination is illegal and the case law mentioned above delay was 13 years.

The learned representative of the O.P. has argued that there was no dispute regarding not working of the casual labour project for 24 years. The worker himself has abondoned the job long long back. The worker was only insisting his employment as a regular Railway Servant and after a lapse of 24 years the Govt. should not have referred the dispute of termination for adjudication. He has argued that our own High Court has quashed such reference. He has relied his argument on 2001(84) FLR 304 U.P. State Electricity Board and another V/s. State of U.P. & Others. He has argued that "It is true that the Act does not lay down any period of limitation. This however does not mean that a dispute can be raised at any time even after an inordinate delay that can be a legitimate ground for holding that there does not exist in present Industrial Dispute." However in case there is undue and inordinate as well as explained delay. A presumption may arise on the facts and circumstances of particular case that no dispute exists in present and in such cases the reference may by the Govt. may be quashed. In the above case, law that facts and circumstances were that the respondent No. 5 kept silence for more than 15 years and he wake up only after the petition of the other co-worker was allowed and he made no effort to get his dispute referred to Industrial Tribunal or a Labour Court. Now he can not be allowed to raise a dispute after a lapse of such a long time.

The facts and circumstances of the case are that all along since 1-5-79 the worker has been demanding for his employment as a permanent employee, as discussed above, that is not the issue referred for adjudication. The issue referred to the court is whether the action of the management of Deputy Chief Engineer Construction, Central Railway, Jhansi in terminating the services of Shri Rajender Prasad w.e.f. 2-5-79 is justified? I have to confine myself to the issue referred. The said issue was never raised by the workman for the 24 long years. Why it was not raised is not explained at all. The case law alone referred by

the representative, is particularly applicable to the facts and circumstances of the present case.

O. P. has relied on yet another case law of Hon'ble Rajasthan High Court Published in 2000(B5) FLR 824 Narendra Singh Solanki and RAW and Finishing Production and Another. Hon'ble High Court held that "In the absence of any such evidence, finding by the learned judge that it is a case of abandonment can not be by the learned Labour Court or by this Court.

The learned representative of the workman have relied on the case law LLR 1994 the Chief General Manager SBI, Lucknow V/s B. C. Verma and Others, the facts and circumstances of the present case are different than what ever in the case above.

Another case referred by the workman's representative are as follows :

- (1) LLR Satish Pal Singh V/s Union of India.
- (2) CWP No. 12061 of 1994 Jeevan Prasad Misra and Labour Court.
- (3) 1985 Supreme Court Cases (L&S) 531. Y. RAMANAJANEYULS V/s State of A. P. and Others.
- (4) 1999 LLR 972 Karnataka High Court S.N. Vasu and others V/s. Management of Bhartiya Fertilizer and Another.
- (5) 2000 LLR 136 Delhi High Court, Delhi Transport Corporation V/s. Presiding Officer and Others.
- (6) 1999 LLR 845 New Delhi Municipal Corporation V/s. O.P. Sethi and others.

I have gone through all the cases referred. I Humbly come to the conclusion that the facts and circumstances of the present case is different then others. In the present case no dispute was raised for 24 years about the termination. In the present case it is the workman who ceased to report for delay and even after he ceased to report for duty. It is not worker's case that at any point of time he reported for duty and he was refused to work. He straight away invokes the provision of the Act and therefore this a case on which Railways have done nothing whatsoever to put on and to his employment and hence the case does not fall within the meaning of Section 2(oo) of the Act, therefore it does not satisfy the requirement of Section 25.

On the discussion above I come to the conclusion that there is long delay of 24 years which has not been satisfactorily explained. I also come to the conclusion that the employer did not terminate the services of the workman, rather it is the workman who abandoned the work. Issue therefore decided accordingly against the workman and the workman is not entitled to any relief.

30-10-2003

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 6 नवम्बर, 2003

का.आ. 3296.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हेमाद्री सीमेंट लि. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 134/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-11-2003 को प्राप्त हुआ था।

[सं. एल.-29025/6/2003-आई. आर. (विविध)]

बी. एम. डैविड, अवर सचिव

New Delhi, the 6th November, 2003

S.O. 3296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 134/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Hemadri Cement Limited and their workman, which was received by the Central Government on 06-11-2003.

[No. L-29025/6/2003-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT
HYDERABAD

PRESENT : Shri E. Ismail, B. Sc., L.L.B.,

Presiding Officer

Dated, the 8th day of September, 2003

INDUSTRIAL DISPUTE L. C.I.D. No. 134/2002

(Old I.D. No. 238/97 Transferred from Industrial
Tribunal-cum-Labour Court, Guntur)

BETWEEN:

Sri Ch. Bhaskara Rao.

R/o Kona Kanchi Post.

Penuganchiprolu Mandal,

Krishna District.

AND

The Plant Manager.

Hemadri Cement Limited.

Vedaderi Village.

Jaggaiahpet.

Krishna District.

... Respondent

APPEARANCES:

For the Petitioner : M/s. G. Ravimohan, R. Devander Reddy, G. Srinivasa Reddy & G. Naresh Kumar, Advocates

For the Respondent : Sri Y. Sitaramaiah, Advocates

AWARD

The case I.D. No. is 238/1997 transferred from Industrial Tribunal-cum-Labour Court, Guntur in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 134/2002. This is a case taken under Sec. 2 A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The brief facts as stated in the petition are: That the Petitioner was appointed on 4-8-90. He was paid a consolidated salary of Rs. 1,400/- as per the terms and conditions at the time of appointment of the Petitioner. Thereafter his services were confirmed by the post of diesel mechanic in the pay scale of Rs. 559-15-20-859/- with a revised total salary of Rs. 1,734/- per month with effect from 1-6-93 by an office order dated 4-12-93. he has been discharging his duties to the utmost satisfaction of his superiors without any remarks. The allegation that the Petitioner is that the Petitioner was issued with a show cause notice dated 17-11-95 alleging that the Petitioner have asked M/s. Professional Compressors Repairs, Vijayawada to pay illegal gratifications on percentage basis for an amount paid to the party by the Company. The Petitioner has taken Rs. 500/- from M/s. Professional Compressors Repairs after completion of compressor repairs recently. The Petitioner submitted his explanation dated 20-11-1995 denying the charges alleged to have been committed. The Petitioner was suspended from services by an order dated 24-11-95. Show cause notice-cum-chargesheet was given on 27-11-95. An enquiry was conducted against the principles of natural justice. That the Petitioner's duties are as diesel mechanic to repair diesel engines, compressors etc., within the premises of the Company. The Petitioner is no way concerned with the financial transactions. Since the Petitioner made complaint against MW1 in respect of guilty of repairs work, the MW1 has made a complaint against the Petitioner to cover up his misdeeds. That the enquiry was not conducted properly. It is prayed that the dismissal order dated 20-2-96 be set aside and the Petitioner be reinstated into service with back wages.

3. A counter was filed on behalf of the respondent. That the Petitioner was taken by the Respondent as diesel mechanic-cum-operator on probation from 27-8-90. During his probation period his services were found satisfactory and his probation was extended from time to time and lastly, the services were confirmed in December, 1993, and was

taken as diesel mechanic and posted in a factory. He used to attend at machines of the factory and also at mines and he has to see the smooth running of the machines and also has to attend the small repairs if any to the said machines. Further, he has to go outside whenever machine was sent to repairs to outside factory to M/s. Professionals, Vijayawada for repairs and has to verify whether the repairs was proper or not. While so on 4-9-95 the Respondent sent the ELGI Compressor machine to the professionals, Vijayawada for repairs at the instance of Mines Manager and they asked to depute the concerned person and the Petitioner was deputed and projected the machine on 3-11-95. A letter was received from M/s. Professionals that the Petitioner asked for Mamulu, they offered Rs. 200/- but the Petitioner was not satisfied, instead of it he took Rs. 500/- from out of the total repair costs of Rs. 60,000/-. He went on asking again and again. Hence, an enquiry was formed and he was dismissed.

4. As the Petitioner was absent although Mr. Ravimohan offered and filed Vakalat, continuously and the Petitioner's Counsel conceded that the domestic enquiry is validly held on 5-3-2003. But, continuously no representation was made on behalf of the Petitioner. Neither he nor his Counsel appeared for the last three hearings.

5. The Petitioner and Counsel were called absent on 9-4-2003 and 26-5-2003. Hence, the arguments of the Learned Counsel for the Respondent were heard on 14-7-2003. Before coming to the arguments of the Learned Counsel for the Respondent, the submissions of the Petitioner are : That he was appointed as diesel mechanic cum operator on 4-8-90 and paid on consolidated salary of Rs. 1400/- per month. Thereafter his services were confirmed in the post of diesel mechanic when the graded scale was Rs. 559-15-20-859/-. That the engine was sent for repairs and it was alleged that the Petitioner was asked M/s. Professional Compressors Repairs to pay illegal gratification on percentage basis for a amount paid to the company. The Petitioner has taken Rs. 500/- from M/s. Professionals after completion of compressor repairs recently. That he was suspended from service by an order dated 24-11-95. That the Petitioner is in no way concerned in the financial transactions. He was neither allowed to go nor to discuss with other parties. As the Petitioner is made complaint against MW1 (in the enquiry) in respect of guilty of repairs work, MW1 has made a complaint against the Petitioner. Hence, he may be reinstated.

6. As the Learned Counsel for the Petitioner has conceded that the domestic enquiry is validly conducted, the only arguments could have been under Sec. 11 A. Unfortunately, the Petitioner and the Counsel for the Petitioner were absent. Further, it may be taken as his argument that the Petitioner would have submitted that the punishment is disproportionate to the alleged charge of having accepted Rs. 500/- The Learned Counsel for the Respondent submits that the Respondent Company was

on the loss and the same was referred to B.I.F.R. to declare the respondent factory as a sick unit and the case is registered as case No. 247/98 before the B.I.F.R. So as per the A.I.F.R., Delhi, the Respondent cement factory is a sick industry. As such the provisions of Section-22 of S.I.C.A. Act are applicable to the respondent's cement industry. Hence, the question of reinstatement of the Petitioner does not arise at all, as the Company itself is closed from 1999. That the Petitioner has taken Rs. 500/- still not satisfied, he demanded more. In fact, the Respondent called the Petitioner and questioned the allegations made against him in the said complaint of M/s. Professional Compressor Repairs, Vijayawada but, he did not give any reply and kept quite. It is a gross misconduct and as the enquiry is held valid he cannot be show any mercy. He also relied on the Judgement reported in LLJ 2003 page 223 wherein it was held by his Lordship that "Obtaining illegal gratification—Inquiry Officer holding Petitioner guilty—Disciplinary authority agreeing with said conclusion—Appellate authority confirming dismissal—As appellate authority has applied his mind and has no passed order mechanically, order of appellate authority cannot be said to be illegal". He also relied on 2000(87) FLR page 322 wherein it was held that "Tribunal having held that domestic enquiry is fair and valid— The scope of interference was very limited". So he submits that no sympathy need be shown.

7. It may be noted that as the enquiry has been conceded to have been validly conducted, it is a question of demanding illegal gratification and accepting Rs. 500/- and then further demand is there. Hence, it is not a fit case to warrant any interference. Hence, an award is passed holding that the Petitioner is not entitled to any relief!

Award passed accordingly.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her, corrected and pronounced by me, on this the 8th day of September, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 6 नवम्बर, 2003

का.आ. 3297.—औद्योगिक विषयाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विशाखापट्टनम स्टील प्लांट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विषयाद में केन्द्रीय सरकार औद्योगिक

अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 6/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-11-2003 को प्राप्त हुआ था।

[सं. एल.-29025/5/2003-आई. आर. (विविध)]

बी० एम० डैविड, अवर सचिव

New Delhi, the 6th November, 2003

S.O. 3297.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Visakhapatnam Steel Plant and their workman, which was received by the Central Government on 06-11-2003.

[No. L-29025/5/2003-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

PRESENT : Shri E. ISMAIL, B. Sc., LL.B.,
Presiding Officer

Dated the 24th day of September, 2003

INDUSTRIAL DISPUTE L.C.L.D. No. 6/2001

BETWEEN:

Sri Sube Singh,
S/o Ramachander,
Technician Mechanical,
E. NO. 106349, Jaggayyapet,
Limestone Mines,
Visakhapatnam Steel Plant,
Jaggayyapet, Krishna District. Petitioner

AND

1. The Chairman-cum-Managing Director,
M/s. Rashtriyan Ispat Nigam Ltd.,
Visakhapatnam Steel Plant,
Ukkunagaram, Visakhapatnam.
2. The Director (Personnel),
Visakhapatnam Steel Plant,
Ukkunagaram, Visakhapatnam
3. The Manager (Personnel),
Visakhapatnam Steel Plant,
Ukkunagaram, Visakhapatnam.
4. The Manager (OMQ),
Visakhapatnam Steel Plant,
Jaggayyapet Limestone Mines,
Jaggayyapet, Krishna District Respondents

APPEARANCES:

For the Petitioner : M/s. M. Pitchaiah, M.L. Ali,
K. Kalidas & V.S. Subramanyam,
Advocates

For the Respondent : M/s. V. Ravinder Rao, Satoor
Narayana Goud & Ram Joshi,
Advocates

AWARD

This is a case taken under Sec. 2 A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The brief facts as stated in the petition are: That the Petitioner was initially appointed as technician (Mechanical) in the Respondent Company on 25-4-89 and he was posted at Visakhapatnam Steel Plant Mines at Jaggayyapeta, Krishna District. That the Petitioner was elected as General Secretary in V.S.P. Mines Employees Union in the year 1991-92. During this period he has agitated for the legitimate rights of the employees and brought irregularities and misappropriation of the Respondent Management to the notice of the higher authorities. Consequently, the Petitioner was subjected to mental agony and humiliation in the hands of the Respondents/Management. The Petitioner's confidential reports were spoiled purposely and his service career was also spoiled by the Respondents with *malafide* attitude.

3. The Management developed a sort of ill-feeling and further as he belongs to Haryana State and lack of local support for which the Management took advantage. His confidential records were spoiled step by step and the Petitioner was made to suffer hardship. That on 13-2-1992 the Petitioner received a letter from one Mr. B. V. Ramana, Manager (Mech.) threatening with dire consequences if the Petitioner does not resign his to his post. Apprehending danger in his hands the Petitioner submitted resignation under protest on 28-12-92 stating that his resignation from service was that the active consideration of the Respondent Management. The Petitioner disclosed this before higher authorities under what circumstances he was constrained to resign from the service, but no action has been taken. He also produced letter written by Sri B. V. Ramana, Manager (Mech.). He apprehended the danger to his life and submitted his resignation under protest on 23-2-93 and the same was accepted without any opportunity to the Petitioner. Though the Petitioner wanted to withdraw his resignation. Against the order of acceptance a mercy appeal dated 28-3-93 has been filed before the Respondent Management and the same was not considered. A Writ Petition No. 14643 was filed seeking direction for consideration of the said mercy appeal but the Hon'ble High Court dismissed the said Writ Petition holding that it is barred by limitation.

4. The Petitioner after resignation, is residing at Haryana State, as it has become difficult to eak out his livelihood. He could not prosecute legal remedy within the time as he is staying at far off place and also lack of financial support. Despite his repeated request the Respondent Management did not permit him to withdraw the protest resignation. Further the contents of resignation letter itself shows that it is not submitted voluntarily or wantonly. It was because of purely coercion and force of the Respondent Management's officers. There is no occasion or reason which warrants to submit his resignation. That part, he neither committed any irregularity nor misappropriation except that he was totally humiliated by the Respondent Management and put to mental agony. As there was threat to his life, he was constrained to his protest resignation and hurriedly left for his native place, Haryana State. No enquiry was conducted about the complaint that there was threatening to the Petitioner by some officers. That he is out of job for the last 8 years. He is the only bread winner of the family. Hence, the records may be on the back and the Respondent be directed to reinstate him with seniority and back wages etc.

5. In the counter it is stated that the Petitioner has filed Writ Petition 14643/97 before the Hon'ble High Court of A.P. which was dismissed by an order dated 15-7-97 against which he preferred an appeal Writ Appeal No. 905/97. The said Writ Appeal was also dismissed by order dated 20-8-97. Hence, the present petition is not maintainable. That the Petitioner is barred by the limitation since the resignation submitted by the Petitioner was accepted and order was passed to that effect on 15-3-93. The Petitioner again filed the petition after a lapse of more than 6 years. In fact, the said writ petition was also dismissed on the above said latches. The application suffers from an irregularity going to the root of the matter. The Petitioner being an employee of Rashtriya Ispat Nigam Limited ought to have made the said company as Respondent to the case, failure to make the company/employer party is fatal to the application. The Respondents as arrayed are only officers of the company and any action taken by them in their official capacity is on behalf of the Company. The Respondents are not personally liable and not necessary parties, unless they are made nominees with specific allegations. Hence, he submit that the present application without making the employer/company is liable to be dismissed on that ground only.

6. The Petitioner joined the service of Rashtriya Ispat Nigam Limited as Technician Mechanical on 11-5-89 but not on 25-4-89. The confidential report even from 1-4-91 to 31-3-92 reveals that his services were not satisfactory. The adverse entries were communicated to the Petitioner on 16-5-92 and he was advised to improve his performance in areas where he got adverse remarks. Out of a total strength of non executive employees in the main plant only about 200 employees are working in

Jaggayyapet. There are unions operating at Jaggayyapet Steel Plant Employees Union affiliated to CITU was recognized union during 1991-92. The Petitioner was the General Secretary of V.S.P. Mines Employees Union during that year. The recognized union was taking up all the causes of employees with the Management. The allegation that confidential report of the Petitioner was deliberately spoiled with malafide intention is vague. The company has formulated a sound system of evaluation and assessment of the performance of the employees by taking relevant factors into consideration. The assessment is also at two levels. Hence, it cannot be said that confidential report was deliberately spoiled. It is false to state that Sri B.V. Ramana, Manager, (Mech), sent a letter dated 13-2-1992 to the Petitioner threatening him with dire consequences. Before accepting the resignation the Petitioner was summoned several times and several rounds of discussions were made and was also afforded sufficient opportunity to withdraw the resignation. Not only he gave his resignation but insisted on its acceptance during several rounds of the discussions with the officers concerned. Ultimately it was accepted on 15-3-93 one month after the resignation was submitted. The Petitioner never sought to withdraw his resignation. Mercy appeal dated 23-2-93 is contrary to Standing Orders and hence, the Management is under no legal obligation to consider the same. The Petitioner have voluntarily submitted and insisted for acceptance of resignation is now pleading extraneous and irrelevant factors to gain the sympathy of the Hon'ble Tribunal. There was no removal from service as alleged by the Petitioner and hence it does not constitute a dispute. The Petitioner actually stated that he wants to leave the job and go abroad. In fact a letter dated 13-2-93 was addressed to him that there was no intention for any one either to harass him or to terminate his services. In fact he was given an opportunity to meet the Dy. General Manager (Mines) on 10-2-93 at Madharam dolomite Mines, Madharam Khammam District where he was camping or alternatively to meet him at Visakhapatnam on 12-2-93. Neither of the opportunities is availed by him. Again a final opportunity was given to him. The Dy. General Manager (OMQ) on 8-3-93 at Visakhapatnam. It was also categorically mentioned that in case he does not meet the Dy. General Manager (OMQ), it will be presumed that he has no interest to continue in service and that appropriate action would be taken on the resignation submitted by him. All these communications were addressed to his permanent address as well as official address of the Petitioner. Ultimately, he was released from the services of the company with effect from the afternoon of 15-3-93. In fact, the Petitioner in a letter in November, 1993 used threatening language, "if justice is not done to him he will have to seek peace to his heart and soul in a different way". The Petitioner is sought to project this case as if it is one of removal or termination, which it is not. This Court may take judicial notice that the Management of Visakhapatnam Steel Plant has always endeavored and

adopted sound work practices. Employees including trade union representatives are treated with utmost dignity and fairness. Management of Visakhapatnam Steel Plant at no point of time has been guided by malafide intentions.

7. The Petitioner examined himself as WW1 and deposed that he is residing with his family at Village Maswet Post Rampuri, District Rewari, Haryana. That he was appointed on 25-4-1989 as a technical Mechanic N3 Grade of the Respondent and was posted at Jaggayyapet Limestone VSP Mines. His probation was declared on 6-8-90. The appointment letter is Ex.W1. The probation was declared vide Ex.W2 dated 6-8-90. After appointment his family shifted at Quarter No.A-74, provided by the Respondent. There were no adverse remarks during his probation period.

8. He used to take the cause of the workers with the Management as he was elected as General Secretary for the year 1991-92 which was against the taste of the Management. The Management attitude became biased against him and they were asking him to do one work and suddenly asking him to do some other work even marking absent when he was present. That he discharged duties to the best of his ability during the year 1-4-1991 to 31-3-1992. But, his CCRs were adverse during the said period. Without any complaint and without any remarks from any quarter purposefully his CCR was given against the actual record of his service. This only because he was General Secretary of the VSP Union and agitating against the Management. That he preferred appeal to the Chief Engineer(OMQ) which was not considered. The CCR was sent to him for the period 1-4-1991 to 31-3-1992 on 16-5-92 vide Ex.W4. The office copy of the appeal preferred before the Chief Engincer (OMQ) is Ex.W5. Ex.W6 is the reply to his appeal. He was threatened verbally by Sri Hanumantha Rao Chief Engincer (OMQ) and Sri B.V. Ramana Incharge of Mines. Ex.W7 is the letter dated 13-2-92 written by Sri Ramana threatening him to resign or would make false allegations. After receipt of the letter he approached with the assistance of Sri B.K. Samanth Rai, General Secretary, Roorkela. He also complaint to the political leaders. No action was taken against Sri B.V. Ramana. He was daily harassed by the VSP Mines Management. After receipt of the threatening letter and calls, his wife and children left for Haryana and he was staying alone. Since nobody came to his rescue he was constrained to submit under protest resignation vide Ex.W8 dated 28-12-92. He was in service till 11-2-93. He has not received any written communication during the said period, only on 13-2-93 he received letter from Deputy General manager vide Ex.W9 asking him to see him at Visakhapatnam on 8-3-93. By then he had already left for Haryana, hence, he sent a reply dated 23-2-93 vide Ex.W10. He never offered to meet him at Jaggayyapet where he was working, where he asked Sri B.V. Ramana, Manager Mines for TA, DA advance, he refused both. Vide Ex.W11 his resignation was accepted.

Before accepting his resignation and relieving him he was not allowed any hearing. Vide Ex.W12 he appealed against the order of Ex.W11. One Mr. J.N. Rao, who was General Secretary of the Union prior to him also filed a writ petition and got reinstatement. That he addressed a letter to Deputy Prime Minister regarding the corruption vide Ex.W13 dt. 22-2-90. He has also written Ex.W14 to the Director General of Mines, Dhanbad on 21-10-91 about violation and safety and welfare measures. WW1 has written to C & MD on 4-11-91 vide Ex.W15 about the writ petition and misappropriation of running account bills. A written letter was given to Sri Hanumantha Rao vide Ex.W 16 stating that the unions is recognized. Ex.W 17 is a letter dated 14-3-92 by the Management asking for four passport size photographs of union leaders. Ex.W18 is a cover showing it is written to the General Secretary. Ex.W 19 is a letter written by Santosh Mohan to Hon'ble Prime Minister who was the then Chairman, Public Accounts Committee. Ex. W 20 is a letter written by him to the Chairman-cum-Director against the Visakhapatnam Management authorities and strike notice from mid night of 31-5-92. Ex.W 21 is the Management letter requesting to withdraw the proposed strike from 31-5-92. Ex.W22 is a letter dated 19-8-92 for nomination of two employees in formation of parent teacher co-ordination committee. Ex.W23 is the Judgement of the Hon'ble High Court in W.P. No. 14643/97 praying the Hon'ble High Court to direct the Respondent to consider and dispose the mercy petition which were refused by Hon'ble High Court. But it was dismissed. He preferred W.A. No.905/97 which was also dismissed vide Ex. W24. Ex. W25 is the Xerox copy of his passport showing that he obtained the passport for the first time on 2-2-97. That the resignation under compulsion Ex. W11 may be set aside and he may be directed to be reinstated into service with all attendant benefits.

9. In the cross examination he deposed that he was born and brought up in the above said village and has his education also there. Visakhapatnam is 2200 KM away from his village. That in response to the employment notice the Respondent published, he applied. Round about one year prior to his joining in 1989 the employment news was published. The qualification is matriculation and ITI or NCTVT, Diesel mechanic or motor mechanic. As per Ex.W1 conditions he gave letter accepting terms and conditions. He gave protest resignation vide Ex.W8 through proper channel and also sent by registered post. The signature on Ex.W8 is on the top most probably is of Sri U.G. Rao, Junior Mechanical Enginner. That he has not filed any proof of having sent by registered post. Ex.W4 is a letter of CCR that his character I not up to the mark. Ex.W5 is the reply to Ex.W4 given by him with a request to expunge the remark. That he had taken 50 days leave during the assessment period Ex.W4. One Sri B. V. Ramana was Mechanical Manager and others used to harass me. Sri Ramana was the Incharge of the entire mines. He used to go to Ramana's office and about union's work. The staff of Ramana's office

and himself were not on greeting terms. He had show his original passport in his chief examination. Xerox copy is Ex.W25. That he had went to Dubai frequently that is thrice and now he has to go for the fourth time. Some motor parts of a Delhi Businessman, he is employed only for taking and bringing the goods and not regular basis. The shop is in Karolbagh. Distance between his village and Karolbagh is about 100 KM. He was given to and fro ticket and Rs. 2000/- to Rs.3000/- as commission. He denied that he was not in India from 24.9.98 to 11-7-2001. Ex. W12 is signed by him. He has not filed any proof that he has sent Ex. W12 through registered post. He denied that he has not signed the mercy appeal. He denied that Ex. W7 is written by him and he forged the signature of Sri Ramana.

10. Ex.M 1 is the letter requesting for extension of leave and the address is of Haryana but it is posted at Bombay, which he had given it to a friend at Haryana to post. It is not true to suggest that he was residing and working at Bombay, therefore he posted from Bombay. He denied that he was called for two or three times and he did not go the matter was decided. Once the General Manager asked him to come to Visakhapatnam and he said he must be given to and fro charges and he must be given protection. That when the letter was received he was at Haryana and the letter was addressed at the native place of Haryana. He replied to the same.

11. He had applied for medical advance on 9-12-92, Ex.M2 and the same was sanctioned very next day vide Ex.M3. It is true that a letter dated 9-10-92 was given by him vide Ex.M4. That he was given notice, Ex.M5 for unauthorized absence. He knows M. Srinivas. He was a technician mechanic and President of the union. He does not know whether the Government Examiner of Questioned Documents, Government of India opined that the letter received by Srinivas was not signed by Sri B.V. Ramana. It is not true to suggest that himself and Srinivas forged Ex.W7 and the letter to Srinivas. He denied that he did not file any mercy petition and resigned on his own accord.

12. Management examined Sri Vijaya Kumar Sule, Manager, Personnel in Visakhapatnam Steel Plant as MW1. Ex.M6 is the authorization given to him to depose. That he is working with Respondents since 10 years. That he worked at Visakhapatnam from 1991 to 1996 and worked with R4 at Jaggayyapet from 1997 to 1999. That he worked from 1999 to 2001 at Madharam. At present he is working at Visakhapatnam. After he was posted in June, 1997 at Jaggayyapet he came to know WW1 who was working and had worked at Jaggayyapet from 11-5-89 to 15-3-93. He is deposing on the basis of record. Upto 1991 March WW1's performance in 13 areas was not satisfactory. The Petitioner gave a reply which is Ex. W5 and the reply to Ex. W5 vide Ex. W6 dated 22-9-92. All his personal benefits were given promptly without delaying. His medical bills and advances were sanctioned promptly vide Ex.M2 and Ex.M3. WW1 submitted his resignation vide Ex. W8 on 28-12-92. In that

he has mentioned that there was a threatening letter from Sri B.V. Ramana, Mechanical Manager. The said Manager denied that the said letter was not written by him WW1 did not give Ex.W7 even when asked for by the office. But he gave a Xerox copy. Similar letter was addressed to Srinivas technical mechanic on 13-2-92. The said letter written to Srinivas was sent to hand writing expert who opined vide Ex.M8 that it is not the signature of B.V. Ramana. WW1 did not give any original letter. In fact Sri B.V. Ramana called him on 31-12-1992 and informed him that the Management has no intention to harass anybody and asked Mr. Singh to withdraw his resignation. This was accepted by the Petitioner vide Ex. W10 dated 22-2-93. Later he was informed by the Management to meet Sri R. Hanumantha Rao, DGM (OMQ) on 10-2-93 at Madharam where he was camping. At that time and on 12-2-92 at Visakhapatnam. This is also admitted by the Petitioner vide Ex. W9. Later he was asked to see on 8-3-93. This is also admitted by WW1 vide Ex. W10. He has not filed availed any of the opportunities and insisted the Management to accept his resignation letter dated 28-12-92 vide his letter dated 23-2-93 which is Ex.W10. The Management finally accepted his resignation vide Ex. W11 dated 15-3-93. After being relieved from the company's service he sent a letter to the Management on 18-11-93 threatening that he will decide as per his soul. The Management also addressed the letter to Superintendent of Police, Krishna District and Superintendent of Police, Rewari District, Haryana. Since then, they have not received any communication from WW1 upto 1997. On 30-6-97 he filed a writ petition No. 14643/97 before the Hon'ble High Court which was dismissed on 15-7-97. Against that order a Writ Appeal was preferred vide No. 905/97, the said WA was also dismissed. Later on behalf of WW1 Mines Workers Union submitted a representation before the ALC(C), Vijayawada on 15-9-97. On the failure of the conciliation a reference made to the Hon'ble Tribunal. The claim of the Petitioner of unemployment is not correct. That he had gone to Dubai three times and earning money on commission and he has also admitted in the cross examination that he has been going to Dubai for the fourth time. His claim of harassment is totally false. Because Management has not taken any disciplinary action on the employee. He has been paid regular salaries every month without any delay. Hence, he is not entitled for any relief.

13. In the cross examination he deposed that he is qualified in MA (Economics). Probation will be declared if only one work satisfactorily. Ex.M13 is the confidential report from 1-4-91 to 31-3-92. There are no complaints, charge memos, explanation called for in writing but he has been warned orally several times. Ex. W3 is the intimation informing the names of the office bearers of the union while Sube Singh is shown as General Secretary. Management does not reply to Ex. W3, Ex. W13, W14, W15, W16 are the complaints against the Management. These complaints are

within the period for which Ex.W4 was given. Similarly, Ex.W19, W20, W21 are also complaints against the Management. All these exhibits are issued by WW1 in the capacity as General Secretary of the worker's Union. He denied that because he gave these complaints his confidential record was spoiled and Ex.W4 is wrong. Ex.W5 is the representation of WW1 addressed to the Chief Engineer (OMQ) to expunge the adverse entries made in the Ex.W4. The said appeal consists of 22 paras. Ex.W6 is the reply to the representation Ex.M5. No action has been taken against Srinivas, for producing forged letter. As per records from the date of submission of resignation vide Ex.W8 and till it was accepted vide Ex.W11 dated 15-3-93 the only communication on record is Ex.W9 dated 13-2-93. Ex.W9 is sent through Controlling Officer, Jaggayyapet and went to his address at Haryana. At the time of Ex.W9 he was on leave. Ex.W10 is the reply to Ex.W9.

14. Deputy General Manager, Sri B.V. Ramana was examined as MW2. He has been working with the Respondent since 30-6-2001. He has gone through the file of WW1 upto 1990-91, his performance was good. Afterwards his performance was not up to the mark. Ex.W7 threatening letter alleged to have been written by him is not written by him and the signature on Ex.W7 is not of Sri B.V. Ramana. He denied on the basis of Ex.W7, WW1 resigned. In the cross examination he deposed that from the records he says that WW1's performance was good during 1990-91. That his performance was deteriorated from 1991 onwards. He was present by the time Ex.W3 was written on 29-9-1991. He has now gone through Ex.W20 dated 28-5-1992 which is a complaint against him and others. He denied that the allegations in Ex.W20 are true. He was charged and enquiry was conducted and he was exonerated. It is correct that the first adverse report is from 1-4-91 to 31-3-92 vide Ex.W4 and otherwise after he has taken charge at Jaggayyapet. That he came to know about Ex.W7 and Ex.M10 on 17-4-92 during vigilance enquiry. As the original letter was not produced at all by WW1, hence, there is no scope of complaining. He told him orally to produce Ex.W7. MW1 worked with him during June, 1997 to May, 1998 at Jaggayyapet. No charges were pending against MW1 during his period. It is not true to suggest that there are charges against MW1 and he is deposing falsely.

15. MW3 is the Assistant Government Examiner of questioned documents, Sri R.B. Bhosale, who examined the documents of this case and expressed the opinion that, "the person who wrote the enclosed signatures stamped and marked from S1 to S10 did not write the red enclosed signature similarly stamped and marked up Q1. The opinion number is BH 116/2002". Ex.W7 is the questioned document that he has carefully examined and came to the conclusion that the person who wrote the signatures S1 to S10 did not sing the letter Ex.W7. That his another colleague Mr. S.N. Gupta who is Deputy Government Examiner of questioned documents also opined the same.

In the cross examination he deposed that he has carefully compared the same.

16. It is argued by the Learned Counsel for the Petitioner that the above case is filed challenging the orders passed by the 4th Respondent accepting the forcible resignation submitted by the applicant under protest which amounts to termination and hence, the Petitioner may be directed to be reinstated into service with all benefits. In a case decided by our own High Court, Vice Chancellor Versus U.N. Dass reported in 2001 (4) ALD page 806, the Division Bench of A.P. High Court had an occasion to deal with the similar case and it was discussed at length.

17. That the Petitioner was appointed as technician (Mechanical) in the Respondents company on 25-4-1989 and he was posted to Visakhapatnam Steel Plant Mines at Jaggayyapet, Krishna District. Till his forcible resignation was taken in the year 1993. Petitioner was elected as General Secretary in Visakhapatnam Mines Employees Union in the year 1991-92. During this period he has agitated for the legitimate rights of the Mine Employees and brought several irregularities of the Respondents to the notice of the higher authorities. His confidential reports were spoiled, his career was ruined and as he is from Haryana State he has suffered more than any other. He received a threatening letter from Sri B.V. Ramana, Manager (Mechanical) and submitted resignation under protest on 28-12-1992. The same was accepted without affording him any opportunity on 15-3-93. The contents of the resignation letter itself shows that it is not submitted voluntarily or wantonly. But because of purely coercion and force by the Respondents Management officers. The opportunities which were given to him were for name sake and at different places. In fact, he has filed a mercy appeal which they did not consider. As such he filed WP No. 14643/97 for consideration of mercy appeal dated 23-3-93. The order copy of the Writ Petition is Ex.W23. This Writ Petition was dismissed. As his CRs were spoiled purposely and apprehending danger to his life after receipt of the alleged threatening letter. Ex.W7 addressed by MW2, his resignation under protest is Ex.W8. He was subjected to victimization by the Respondents particularly by MW2. The confidential reports were spoiled purposely and 13 areas, it is marked as poor, despite no single complaint against the Petitioner. No charge memo has been issued. No adverse entries made. Without issue of any memo or warning letters adverse entries are not supposed to be adverse entries. Hence, Ex.W7 C.R. from 1-4-91 to 31-3-92 cannot be taken as correct. The reason is, his sending complaint against the Management's corrupt and illegal practices. Ex.W13 to W16 pertains to the period of Ex.W4. Further, Ex.W8 he has disclosed all the facts which forced him to submit resignation. In fact the said threatening letter was not called for and no written notice was given to him as admitted by the witness except that when he left office to his native

place on 12-2-93. They addressed an Ex.W9 on 13-2-93 which was served to him at Haryana and he could not have come all the way from Haryana when he was very much available for almost one month eleven days he was not given any opportunity to make believe a notice was sent to him at Haryana. Then he filed a mercy appeal dated 23-3-93 vide Ex.W12 which was not considered by the Management. Accordingly he was constrained to file WP No. 14643 of 1997. The order is Ex.W23. The Learned Judge of Hon'ble High Court dismissed the same holding that there is no provision for filing any mercy appeal which will not act as Resjudicata as he has approached this Court on the ground that it is forced resignation and forced resignation amounts to termination of service of the concerned employee. He relies on Judgement of 2001 (4) ALD page 806 of Division Bench of A.P. High Court in W.A.1933 of 1999. Vice Chancellor Sri Padmavathi Mahila Viswavidyalayam, Tirupathi and others Vs. V.N. Das where it was a questioned resignation accepted by incompetent authority it was held that, "it was not an authority acceptance. Their Lordships further observed that in Para 13 as follows, "There cannot be any dispute to the order of resignation may be a voluntary one. If the Respondent had committed certain irregularities while performing her functions in the capacity of the Registrar of the appellant-University, appropriate penal action could have been taken against her. In the resignation letter it was clearly mentioned that the said resignation was being offered as desired by the Vice-Chancellor. Such a resignation have been obtained on coercion or otherwise or on the basis of the direction issued by an authority who had no say in the matter must be held to be totally illegal". He relied on Supreme Court Judgement of 1981(1) SLR in P. Kasilingam Vs. P.S.C. College of Technology, wherein the resignation letter read as follows. "I hereby tender my resignation as a Lecturer. I request that I may be relieved of my duties on 19th September, 1976". However, on 19th September, 1976 the Principal issued a relieving order dispensing his services along with a cheque for 6 months. The Government contended that the resignation letter was obtained by coercion. The order of the State Government for reinstatement of the appellant in service is restored". In 2001(5) ALD page 574 in WP No. 16860 of 1998 his Lordship held where notice of resignation obtained by administrative threat of termination of service. Resignation to come into effect after the expiry of the notice period of three months. But resignation accepted with immediate effect. Subsequent order of termination by paying three months salary in lieu of notice. Acceptance of resignation and the further orders of termination, held unreasonable, arbitrary and opposite to public policy". So he submits that the resignation was forced resignation in the circumstances that there was threat to him and his C.R. was spoiled purposely without issuing any charge memo to him during the said period because as a General Secretary he has brought the corrupt practices of the Management to the notice of the superiors.

18. It is argued by the Learned Counsel for the Respondent that wild allegations were made while submitting resignation Ex.W8 and as it is not as if the resignation was immediately accepted. But it was accepted in March, 1993 after he submitted the resignation letter on 28-12-92. It is also clear from his own admission that he was in the habit of sending letters like Ex.W13, to W16 to Hon'ble Prime Minister and others, to the Director General of Mines, Chairman cum Managing Director, Visakhapatnam Steel Plant and others. This was his behaviour and he submits that that is why C.R., Ex.W4 pertaining to the period from 1-4-91 to 31-3-92 was spoiled. He again says that he received a threatening letter from MW2 which is Ex.W7. Which has been sent to expert and it has been held by the expert who was also cross examined, that this is a forged letter. Even otherwise any man of that stature like MW2; B.V. Ramana would not resort to writing a letter threatening him with dire consequences. Even then it is dated 13-2-92 and he has submitted his resignation on 28-12-92. Further he examined himself as WW1 that he has been elected as general Secretary for the year 1991-92 and the same was intimated to the Management vide Ex.W3 dated 28-9-91. He has admitted that on 13-2-93 he received a letter from Deputy General Manager vide Ex.W9 asking him to see at Visakhapatnam on 8-3-93. By then he had left for Haryana. He did not go but sent a reply vide Ex.W10 dated 23-2-93. There after he filed a petition to get reinstatement. Against that he preferred a Writ Appeal which was dismissed vide Ex.W24. Ex.W25 is the Xerox copy of his passport showing that he obtained the passport on 2-3-97. In the cross examination he as deposed that he gave Ex.W8 protest resignation through proper channel and also sent by registered post. That he has taken 50 days leave during the assessment year Ex.W4. That had been to Dubai frequently thrice and now he has to go for the fourth time for some Motor Parts of Delhi business man. His shop is at Karolbagh. He denied that he was not in India from 24-9-98 to 11-7-2001. There is no proof that he sent Ex.W12 mercy appeal through registered post. Ex.M1 is the letter requesting letter of extension of leave sent from Bombay. He had given it to a friend, he does not know where he posted. He denied that he was working at Bombay. Once the General Manager asked him to come to Visakhapatnam and he said that he must be given to and for charges and protection. That he gave medical advance application on 9-12-92, it was sanctioned the very next day vide Ex.M3. That threatening letter of Ex.W7 was written to Srinivas also who is President. That the Government Examiner of Questioned Documents held that Ex.W7 written to Srinivas is not genuine. MW2 is the person against whom the allegation that he wrote Ex.W7 which he denied. That WW1's performance was good during 1990-91 and deteriorated thereafter. Ex.M1 is for extension of leave and to take action on his resignation. That the said letter Ex.W7 is alleged to have been written by MW2 is opined that it is not signed by MW2. So he further argues that it was not a case of forced resignation.

in fact he has insisted for resignation and after the resignation he has alleged to have file mercy appeal in 1993 for which he has not filed any document. He makes up in 1997 and approaches the Hon'ble High Court for considering his mercy appeal and when the same is dismissed he files a writ appeal which is also dismissed vide Ex.W24. By no stretch of imagination it can be stated that it was a forced resignation. When the said letter is not correct in fact he has gainfully employed and going to Dubai as per his own admission. He relied on 2000 (5) Supreme Court cases page 630 that compulsory retirement means that unsatisfactory performance for a fairly long time ...most of which was unsuccessfully held rendered him a liability to his employer. He was rightly retired in public interest". He therefore prays that the petition may be dismissed.

19. It may be noted that even according to the Petitioner he was appointed on 25-4-89 and his probation was declared on 6-8-90. During his short span of service, he also became a General Secretary during the year 1991-92. He says that he was not called for discussion. Ultimately he was called for discussion. Instead of discussing it with the Management he went on issuing letters about the alleged malpractices of the Company he was asked to come, he did not come from Haryana. Ex.W7 is proved to be fake. It becomes really difficult for the Management to cope up with such persons even if it is taken for granted that such resignation letter was sent thinking Ex.W7 to be written by Mr. Ramana, MW2 is still took him 10 months to submit the resignation. Meanwhile he was unauthorisedly absent. It is also cut in evidence that no discrimination was shown to him that his medical advance was sanctioned on the very next day as admitted by WW1 himself. Perhaps having been elected as General Secretary, he acted on high profile and it may be correct that Ex.W4 is the period during which his C.R. Ex.W4 correspondence to the letter he has written Ex.W13 to W16. Any way I feel that no doubt there is some element of coercion on him but his having approached the Hon'ble High Court after lapse of 4 years and then approaching this Court in 2000 and his admission that he has been to Dubai thrice and going for the fourth time, I am of the opinion that even if there is some element of coercion as stated by me. in view of the lapse of delay of 7 years in approaching the Court and his behaviour, it will not be conducive that he should work again in the same factory. But as there is some element of coercion which may not stand the scrutiny of complete technical coercion, I am of the opinion that as he has worked from 25th March, 1993 almost for a period of five years. Hence, I am of the opinion that the ends of justice will be met if he is given five months pay as compensation for the five years service he has rendered taking his gross pay as of January, 2003 and multiplying it by five (He was on leave in March, etc. his pay of January, 2003 is taken). The amount shall be paid within 30 days after the publication of this award.

Award passed. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 24th day of September, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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WW1: Sri Sube Singh	MW1: Sri Vijaya Kumar Sule MW2: Sri B.V. Ramana MW3: Sri R.B. Bhosale
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Documents marked for the Petitioner

- Ex.W1 : Appointment letter dt.25-4-1989
- Ex.W2 : Office Order No. 11-04/90/1769 dt.6-8-90 declaring probation of WW1
- Ex.W3 : Intimation to the Management reg. Newly elected members of the VSP Mines Emp. Union for the year 1991-92 dt.26-9-91
- Ex.W4 : Confidential report of WW1 dt. 16-5-92
- Ex.W5 : Copy of appeal before C.E. reg. EX. W4 dt.3-7-92
- Ex.W6 : Reply to Ex. W5 vide No.OMQ/II-196(CR)/92/ 2227 dt. 22-9-92
- Ex.W7 : Threatening letter received by WW1 from MW2 dt. 13-2-92
- Ex.W8 : Copy of protest resignation letter of WW1 dt. 28-12-92
- Ex.W9 : Copy of lr.No.OMQ/02-II(SS)/93/461 dt. 13-2-93
- Ex.W10 : Copy of letter to SDGM(OMQ) by WW1 dt. 23-2-93
- Ex.W11 : Office Order No. JLM/1-06/5601 dt. 15-3-93
- Ex.W12 : WW1 's Appeal to C & MD, Visakhapatnam dt. 23-3-93
- Ex.W13 : Copy of Ir. to Dy .Prime Minister dt. 22-2-90
- Ex.W14 : Copy of Ir. Np. VSP/JLM/MEU/91/1-0010 dt. 21-10-91 to DG of MS, Dhanbad
- Ex.W15 : Copy of Ir. to C & MD, VSP, Visakhapatnam dt.4-11-91
- Ex.W16 : Copy of Ir. to CGM(OMQ) No. VSP/JLM/MEW/ 92/1-001 dt.8-2-92
- Ex.W17 : Lr. No. IC-11014/2/JLM/92/313 dt. 14-3-92
- Ex.W18 : Envelope through which Ex. W17 was received
- Ex.W19 : Copy of Ir. written by Sontosh Mohan Dev, to the Prime Minister, dt.30-4-92
- Ex.W20 : Copy of Ir. No.VSP/JLM/MEU/92/21 dt. 28.5.92
- Ex.W21 : Lr. No. JLM/AD/1-28/92/831 dt. 30-5-92
- Ex.W22 : Lr. No. JLM/I-32/92/1984dt. 19-8-92

Ex. W 23 : Copy of WP. No. 14643/1997 dt. 15-7-97

Ex. W 24 : Copy of WA No. 905/1997

Ex. W 25 : Copy of pass port of WW1

Documents marked for the Respondent

Ex. M1 : Lr. requesting extension of leave by WW1 dt. 26.2.93

Ex. M2 : Application for medical advance dt. 9.12.92

Ex. M3 : Copy of O.O.No. JLM/1-174/92/4301 dt.10.12.92

Ex. M4 : Representation by WW1 dt. 9.10.92

Ex. M5 : Warning letter to WW1 No. JLM/92/2725 dt. 5.10.92

Ex. M6 : Authorisation of MW1 to depose for Management

Ex. M7 : Lr. No.BH-1/93/5111 dt. 28.12.2001

Ex. M8 : Attested copy of opinion of MW3 dt. 27.1.93

Ex. M9 : Copy of Opinion of MW3 dt. 27.1.93

Ex. M10 : Copy of threatening letter to Mr. M. Srinivas dt. 13.2.92

Ex. M11 : Copy of joining report of MW2 dt.19.8.88 addressed to the DGM (OMQ), VSP, Hyderabad

Ex. M12 : Copy of statement of MW2 on 17.4.92

Ex. M13 : Original C.R. of WW1 for the period from 1.4.91 to 31.3.92

Ex. M14 : Specimen signature of Sri B. V. Ramana DGM (Mech) of Visakhapatnam Steel Plant, dt. 26.7.02

Ex. M15 : BH-116/2002 opinion of Govt. Examiner dt. 24.12.2002

नई दिल्ली, 7 नवम्बर, 2003

का.आ. 3298.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय ई.आई.सी.आई. प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या-सी.जी.आई.टी.-08/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-11-2003 को प्राप्त हुआ था।

[सं. एल.-42012/105/2002-आई.आर. (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 7th November, 2003

S.O. 3298.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-08/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Export Inspection Council of India and

their workman, which was received by the Central Government on 06-11-2003.

[No. L-42012/105/2002-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 MUMBAI**

PRESENT:

Shri Justice S.C. Pandey, Presiding Officer

Reference No. CGIT-08/2002

PARTIES:

Employers in relation to the management of
Export Inspection Council of India

And

Their Workmen

APPEARANCES:

For the Management : Mr. Narayanan, Adv.

For the Workman : Mr. Mirajkar, Adv.

State : Maharashtra

Mumbai dated the 17th day of October, 2003

AWARD

1. This is a reference made by the Central Government in exercise of its powers conferred upon it by clause (4) of Sub-section 1 of Section 10 of the Industrial Disputes Act 1947 (the Act for short). The terms of dispute are as follows :

“Whether the action of the management of Export Inspection Council of India in not regularizing Shri. Madhukar A. Sapkale and others is legal and justified? If not, to what relief they are entitled to?”

2. The following three employees are seeking regularization of their services as the employees of the Export Inspection Council of India (the council for short).

- (i) Shri. Madhukar Sapkale as a Permanent Peon in Group D.
- (ii) Shri. Prakash M. Gudalkar - Permanent Electrician in Group C.
- (iii) Miss. Rajshree S. Shetty - Junior Stenographer in Group C.

It appears that the fourth employee Shri. Jayant S. Bane does not want to contest the claim. He remained ex parte despite service of notice and has not filed a Statement of claim. Therefore, this tribunal holds that there is no dispute between Jayant S. Bane and the Council. He is not entitled to any award.

3. It is not disputed that this reference was made by the Central Govt. on the directions made by the High Court of Judicature at Bombay in Writ Petition No. 3015 of 1999 filed

by the aforesaid 4 employees. The three contesting employees whose name have been mentioned in paragraph 2 above shall be collectively referred to as 'workmen' hereinafter.

4. It was asserted in the Statement of claim of the workmen that Council was constituted under the Export (Quality Control and Inspection) Act, 1963. It is a statutory body for ensuring that goods exported from this country are of sound quality. The council exercises its technical and administrative control over five export agencies situated at Chennai, Delhi, Kolkata, Cochin and Mumbai. The workmen are employed at Mumbai where the work of quality control in respect of fishery products, milk products, electrical and mechanical equipments and appliances are taken up for certification of quality control for export. There is laboratory of council, wherein the workmen are employed. It is asserted that Madhukar Arjun Sapkale joined as Peon from 14th April 1989. He was sponsored by the local employment exchange. He was given a short break between 17th April 1990 to 30th April 1990. Since 3rd May 1990 he worked continuously as a casual labour initially as Rs.25/- per day and thereafter at Rs. 67.50 per day. The workmen asserted that was not given the benefit of being a permanent employee from 14th April 1989. He claimed that he made a permanent employee. The workmen Prakash M. Gudulkar claimed that he was employed through employment exchange as a casual labour from 28th February 1991. He claimed that he was a qualified Electrician having passed S.S.C and completed his training in the Industrial Training Institute from N.C.T.V.T. He was holding P.W.D. Licence of Class C and PWD Electrical Supervisor Class II. It was claimed that the council committed unfair legal practice by keeping him as a casual employee despite vacancy. Rajshree S. Shetty claimed that she was taken through local employment exchange as typing-cum-Stenographer in Group C from April 1996. She was being taken up on contract basis for every year. Since 10th May 1999 she was being treated as a casual Stenographer grade II. She was not being absorbed permanently by the council causing her financial loss. All the workmen submitted that they were qualified to hold the post and their were available vacancies. The nature of their work was of permanent nature. Accordingly, each of three workmen claimed absorption to his or her respective post in his Group from the date of appointment with all the consequential benefits including arrears of wages with interests and costs.

5. The Council claimed that it is not an industry and dispute between it and the three workmen is not governed by the Act. The dispute is not an industrial dispute. Hence the tribunal does not get any jurisdiction to answer the reference on the merits of the dispute. As to the facts, stated in the statement of claim the council did not raise any dispute before this tribunal regarding the date of appointment, qualifications and the continuity of workmen ex. It was not disputed the workmen except Rajshree Shetty

were paid as daily rated employees. They were paid as casual labourer. In paragraph 8 of the written statement it has been pleaded as follows :

8. "The first party further submits that in view of the directions of the Hon'ble High Court, the said applicants were/are being paid monthly salary at par with other regular employees of their cadre, which was being done in pursuance of order dated 12-2-2902."

9. With regard to the allegation about the vacancies in the respective cadre, it is respectfully submitted that as per the Ministry of Commerce and Industry, Government of India, Internal Work Study Unit's report is being implemented by the First party and the vacancy position only be known on complete implementation of IWSU report and regularization would depend on the condition of Recruitment Rules for respective cadres. However, it was pleaded Shetty was being paid a consolidated salary of Rs.3,000/- p.m. Her services were contractual. The contract was discontinued from 22-7-1999 and she is in service from 12-2-2002 order the order of High Court of Bombay. In paragraph 10 of the written statement the Council stated as follows : "The first party submits with reference to para 9, of the statement of claim that merely the applicants are qualified for certain posts, does not mean they are entitled for regular employment. It is emphatically denied that the first party organization, which is a Central Govt. Statutory body, is working against the rules and regulations. The first party denies that the applicants herein are entitled to any increment of any incidental charges proper seniority in the cadre any arrears etc."

6. In the rejoinder filed by the workmen they pleaded that the reference was made pursuant to order passed by the High Court in W.P. No.3015 of 1999. So far as the merits of the case are concerned the rejoinder repeat the facts alleged in the Statement of claim. However, so far as the case of Rajshree Shetty was concerned, it was pointed out that she was called in the chamber of her superior on 14 Jan., 2000 and was forced to submit resignation at 5.45 PM when the Officers of the Council came to know that she had filed W.P. No.3015 of 1999 along with others. The High Court of Bombay restored her services by order dated 12/2/2002 with effect from 1st March, 2002. The other aspects of her case were repeated in the rejoinder and it was claimed she too was entitled to be absorbed as a Stenographer.

7. This tribunal framed the following issues in this reference.

- (i) Whether the Export Inspection Council is an industry?
- (ii) Whether this Tribunal could consider the question in view of the order of the High Court in W.P. No. 3015 of 1999?

- (iii) Whether Madhukar Arjun Sapkal is serving the Export Inspection Council of India from 14th April, 1989 as a Peon and he liable to granted permanent status?
- (iv) Whether Prakash M.Gudulkar is entitled to be made permanent as an Electrician?
- (v) Whether Rajeshri Shetty is entitled to be confirmed as a junior Stenographer?

8. All the three workmen filed their affidavits. They were cross examined by Mr.Narayanan appearing for the Council. Thereafter, Shri Shivkumar filed his affidavit on behalf of the Council. He was cross examined by Shri Mirajkar, Advocate. Then the parties were heard.

9. The Issue No. 1 and 2 are inter related. They shall be answered by this tribunal here in after. The contention of the Council is that it is not an industry. It cannot be disputed that after delivery of judgement in the case of General Manager V.A. Srinivasa Rao 1977 (9)S.C. 234 the three Judge Bench of Supreme Court held that Bangalore Water Supply and Sewerage Board vs. Rajappa 1978 Lab IC 467 has to be followed for determining whether an enterprise is an industry. The tripple tests laid down in that case are (i) Systematic activity (ii) Organized co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making on a large scale Prasad for food) prima facie there is an industry. It has also been held that absence of profit motive is irrelevant. Any undertaking which possesses the aforesaid three elements has to be declared an industry even though it is not a trade or business provided the employer-employee relationship in that undertaking resembles a trade or business. All those callings under taking and adventures may be treated as industries provided they satisfy the tripple test even though the analogy between them and the trade or business is confined to employer-employee relationship and not others. It was further held that the strictly speaking sovereign functions may be exempted from the definition of industry but not welfare activities or economic adventures under taken by the Govt. Even in cases where three certain departments were performing sovereign functions strictly speaking, the substantially severable limits of that department can be considered to be covered by Section 2(J) of the Act of the triple tests were satisfied.

10. The Council is a statutory body. It advises the Govt. of India in respect of matter relating to exportable goods. It also checks quality of goods which are liable to be exported and controls the export of goods. It has been stated in the affidavit of Mr. Shivkumar that the Council is an organization Ministry of Commerce and Industry. He admitted in cross examination that testing of goods is done

by Export Inspection Agency working under the Council. The Export (Quality and Inspection) Act, 1963 provides as per 6 of that Act, the Govt. of India after consulting the Council, shall notify the commodities which shall be subject to inspection and quality control. The Council has to specify the type quality control a particular commodity shall be subjected to and the stantias for the same. It is duty of Council to certify the quality of exportable goods by making investigation and inspection and approve the samples as fit for export. It has its own testing houses for this purpose. It can issue the certificates though its agency certifying that the quality or specifications regarding the samples of goods satisfy the standards prescribed by the aforesaid Act. This short summary of the work of the Council shows that it fulfills the tripple test. It may not be doing trade or running a business. It is an undertaking of the Govt. of India. There is nothing on record to suggest that the Council or the Agency performs any sovereign function. This tribunal holds that the export Council provides material service for production and distribution of exportable goods to satisfy human wants and wishes. It as such an Industry. This tribunal further holds that Section 3 (2) of the Act of 1963 shows that the Council is a body Corporate. It has power to acquire hold and dispose of property and can sue and be sued in its name. It is not a Department of Govt. of India. Therefore, Article 309 of the Constitution does not apply to it because it is not a 'State' within the meaning of Article 308 of the Constitution of India. It is an independent body. It may be controlled statutorily by the Central Government but control is confined to the powers conferred on the Central Govt. by the Statute. Looking to the nature of its organization, particularly the organization of Council and the agencies, providing the conditions of service of the employees and the work performed by it can be held that the Council is an industry. Its main function is to provide quality control of exportable goods by advising specification and standards and making systematic inspection and testing of samples fit to be exported. It can not escape from the definition of 'industry' under Section 2 (J) of the Act. The Council has failed in its attempt to show that it is not covered by 2 (J) of the Act despite the fact that in the return filed in W.P. 3015 of 1999 it has stated that it has been engaging some of the persons as casual labour. This is also the stand of the council before this tribunal. A casual labour is ordinarily employed in an industry.

11. This tribunal is further of the opinion that the order passed in W.P. No. 3015/99 shows that the council had consented to the direction given by order dated 12-12-2002 that the matter of regularization be referred to this tribunal. The Central Govt. was bound by that order and accordingly it referred the issue of regularization. The acquisence of the council in the order dated 12-2-2002 binds it to a consistent course of conduct. It cannot ignore and reprobate. The consent of council was not a mere

question of law because whether a particular undertaking calling or adventure is an industry is mixed question of law and fact. The council cannot be permitted before this tribunal to plead those fact which may take it out of the definition of Industry under section 2 (J) of the Act. That apart the orders of the High Court of Bombay in W.P. No. 3015 of 1999 dated 12-2-2002 are binding on this tribunal. Right or wrong, this tribunal cannot sit in judgement over the judgement of a superior court having administrative as well as judicial power of superintendence over this it under Article 227 of the Constitution of India. The council could have approached the Constitutionally superior court or else filed an application for review. For all these reasons this tribunal rejects the arguments raised on behalf of the Council and answers issue No.1 and 2 in favour of the workmen and against the council.

12. The next question is regarding the absorption of Madhukar A. Sapkale (Issue No.3). It is not in dispute that workman started to serve with from 14th April, 1989 as a Peon. He is working with the company from 3rd May, 1990. He is being treated as a casual labour. He is being paid at present at rate of Rs. 67.50 per day. Now Shri Shivkumar who was examined as a witness for the council has admitted in cross examination that Madhukar A. Sapkale fulfils the prescribed qualifications for the post of peon. It is also admitted by him that the workman was continuously working from the date of his employment. It is not disputed by him that there was vacancy of peon even as per IWSU report. The workman had made several representations for making him permanent. This tribunal cannot appreciate that merely because voluntary retirement scheme was floated by the Central Govt, the post of peon shall not be filled, even though there is vacancy available with the council. This workman had served the council for about 19 years when he filed the writ petition before the High Court of Bombay on 15-12-1999. This tribunal is of the view that he is entitled to absorption as a peon from that date. Accordingly, he is directed to made permanent from 15-12-99.

13. The next issue is in respect of Prakash M. Gudulkar. The question is if he can be made a permanent electrician. The evidence of the workman indicates that he was taken up as a casual labour from 28-2-1991. He had passed S.S.C. Examination. He had acquired certificate from ITI and NCTVT which are treated as proficiency test for an Electrician in the State of Maharashtra. He was appointed after interview and was sponsored by Local Employment Exchange. The workman was working as an Electrician in the Pilot Test House belonging to the Council. He was required to correct electrical faults in the machinery and the equipment of the Pilot test house. The evidence of Mr. Shivkumar who filed the affidavit may be considered. In his affidavit he had stated that IWSU

had opined that there was one post of Electrician vacant. In his cross examination he stated as follows:—

“The Pilot Test House is situated in Marol Industrial Area. I shall not be able to give the list of equipments installed in the Pilot Guest House. However, it can be produced on the next date. It is correct to say that number of machineries are installed in the Pilot House. It is correct to say that a permanent Electrician has not been employed in the Pilot House. It is correct to say that Electrician is required for day to day progress of the work in the Pilot House. It is correct to say that the workman is working from 28th Feb. 1991 as an Electrician. I am not aware of the qualification of Electrician as per Recruitment rules or Regulation framed by our Department. It is correct to say that the workman qualified for the post of Electrician. It is correct to say that the workman has requested confirmation in the post of Electrician. The requirement of Electrician was approved by Internal Work Study Unit”.

In view of the aforesaid circumstances, the Issue No. 2 is decided in favour of the workman Mr. Prakash Gudulkar. This tribunal is of the view that he too is entitled to be absorbed and made permanent from 15-12-1999 from date of filing of W.P. No. 3015/99 was filed.

14. The fifth issue is regarding confirmation of Ms. Rajshree Shetty as a Junior Stenographer. She stated in her evidence that she was a qualified Stenographer and typist. She appeared in the test interview on 13-3-1996 and in final interview on 10th April, 1996. She stated that she was appointed a junior Stenographer vide letter dated 10th April, 1996. The initial contract was one year with a stipulation of renewal for further period of two years. The contract was continued from 1996 till 22-4-1999. Thereafter, she was recalled again from 10th May, 1999. She was treated as Stenographer Grade II from that date on daily rated basis. It was stated by her that after she filed W.P. 3015/99, she was forced to resign on 14-1-2000. She stated that pursuant to order dated 12th Feb. 2002 she was allowed to continue in service with effect from 01-3-2002. She was continuing in service since then. In cross examination she denied that she had submitted voluntary resignation. It appears from the proceedings of W.P. 3015 of 1999 (M 11) that the workman had claimed that she was forced to sign the letter of resignation on 14-1-2000 when the management of the council came to know about the pendency of petition. This assertion was not accepted by the council. However, when final order by the consent of the parties, was passed on 12-2-2002 the workman was simply reinstated by the High Court with effect from 01-3-2002. This order of the High Court binds this tribunal, and it

is held that for all intents and purposes, the High Court did not accept the stand of the Council in the writ petition denying the fact that workman was forced to resign. The pleading of the Council that her services were terminated as per contract on 22-4-1999 is belied by the question put to her in cross examination that she voluntarily resigned. Shivkumar in cross examination accepted that she continued even after three years. He falsely stated that he had no knowledge of fact that the workman was forced to resign. He deliberately stated contrary to pleadings in paragraph 7 of the written statement (last four lines) that he was not aware that she was taken back only after the High Court directed her to be taken back in service. The result of the aforesaid discussion that the testimony of Rajshree Shetty is accepted and it is held that the workman was appointed and paid less than the wage of regular employee despite there was need of Junior Stenographer to the Council and the working continuously with till 14-1-2000 when she was forced to resign. There is no evidence led by the Council to show that workman did not work after 22-4-99. It appears that workman truthfully stated that on 22-4-99 an artificial gap was created for not taking up her in job temporarily till 10th May 1999. Then again she was continued till 14-1-2000 when she was forced to resign. Thus, the conclusion is that the workman worked from 16-2-1996 to 14-1-2000. The artificial break between 22-4-99 to 10th May 1999 has to be ignored. Thereafter, she was not allowed to work between 14-1-2000 to 28-2-2002. It cannot be treated as break in service. It is not in dispute that she was getting the wages of daily wager when she was asked to resign under pressure. This tribunal is of the view that workman has earned the right of absorption in the post of junior Stenographer with effect from date of filing W.P. No. 3015/1999 i.e. 15th December 1999.

15. This tribunal has considered the facts in detail that three workmen named above fulfill qualification prescribed for recruitment of their posts. The rules and other documents filed on behalf of the council do not initiate against the aforesaid findings. The workmen have worked for considerable period. The council continued to employ them as daily rated worker when there was vacancy available with the council. The long continuance of the workman militates against the agreement that one of them was not employed through Employment Exchange. In Industrial dispute a rigid attitude has not to be adopted by giving advantage to the stronger party who sought to exploit the weaker party i.e. the unorganized labour. Shivkumar admitted that in each case there was a vacancy. The fact that they were continued showed that the Council needed their services. There can be no better proof of the requirement of the Council.

16. Section 2 (ra) of the Act defines 'unfair labour practice' to mean those practices that have been mentioned in the Fifth schedule. Section 25 T of the Act issues a legislative command to the employer, a Trade union or a workman prohibiting there from committing unfair labour practices mentioned in the Fifth Schedule on their part respectively. The first part of Fifth schedule enumerates the unfair labour practices which are prohibited in the case of an employer. It is an unfair labour practice under item No. 10 to employ workman as 'badlis' 'casuals' or temporaries and to continue them as such for years, with the object of depriving them of status and privileges of workmen. It is also clear that as per section 25 U of the Act, the violation of section 25 T would be an offence punishable with maximum sentence of six months or with fine which may extend to Rs. 1000/- or with both. In the opinion of this tribunal chapter V whereby the sections 25 S and 25 T inserted were in the Act w.e.f. 21-8-1984 has made a difference by prohibiting commission of unfair labour practice and providing a sentence for commission of an unfair labour practice. This tribunal is entitled to take note of this fact while granting relief to the workmen on its findings that the workmen were unfairly deprived of their rights by the Council. It may also be noticed that the Council is a Statutory body as already noticed. The Council may not be a department of the Central Govt. but the evidence of Shivkumar shows that it is an organization serving under the Ministry of Commerce and Industry. It is controlled by Ministry of Commerce and Industry. He has stated that study of IWSU of Ministry of Commerce and Industries is applicable because it is controlled by Ministry of Commerce and Industry. It has already been pointed out that the Council is body Corporate. The control of Central Govt. appears to be deep and pervasive as per evidence led by the Council. It is therefore a State within Article 12, though not under Article 308. Therefore, Article 21, 14, 15 and 16 of the Constitution shall be applicable to the employees of the Council. It may also be noticed that Article 36 of the Constitution adopts the same definition of State as is given in Article 12. The fundamental principles of governance of the country laid down in Part IV shall also be applicable to the Council. The Article 38, 39 (d) of the Constitution inter alia have to be applied by the Council as fundamental in the governance of its affairs. The Article 21 of the Constitution unlike in the past, has been given a wider connotation by the Supreme Court in number of cases to include the right of life. A rough and ready one line summary of the decisions of Supreme Court interpretation of Article 14, 21 read in light of Articles 38 and 39 may be that a citizen of this country is entitled to lead his life with dignity appropriate to his status. In the opinion of this tribunal, the item No. 10 of the Fifth Schedule of the Act endeavours to give the benefit of

Articles 38 and 39 (a) of Constitution by way of legislation made by the Central Govt. to all industries. The Council is directly covered by these Articles. This tribunal is entitled to interpret the Act and the item No. 10 in the light of the fundamental rights as interpreted by the Supreme Court following the direction given in Directive Principles of State Policy. It has to be said that the Constitution is the mother of all laws and therefore, what has been provided in the Constitution can be noticed while interpreting and implementing a statute which truly owns its origin to the Constitution. Consequently, this tribunal adjudicates the rights of these workmen in light of sections 25 S and 25T read with item No. 10 of Fifth Schedule of the Act consonance with the Constitution. What is prohibited and made punishable as unfair Labour Practice cannot be justified by the Council on the ground that the Commerce and Industry Ministry had floated a voluntary retirement scheme for reducing the number of surplus employees.

17. The Council has chosen to rely on the decision of Steel Authority of India *vs.* National Union Water Front Workers J.T.2001(7) SCC 269. This case is mainly an authority for the proposition that abolition of labour contract. On issuance of notification by the appropriate Govt. does not result in automatic absorption of employees in the industry wherein the labour was employed through a contractor. The Supreme Court overruled its earlier decision *Air India vs. Union of India* Jt 1996 (4) 366 prospectively. The other points discussed in the case have no bearing on the questions involved in this case. The Council has relied upon the decision of a learned single Judge of Madras High Court M 16. The decision is distinguishable because that case was filed under Article 226 of the Constitution. The learned single Judge was considering posts created for a project which was to last for a limited period.

18. This tribunal states that the office of Council at Bombay cannot justify non-absorption of these workmen on the basis of All India Statistical statements. Firstly, the industrial dispute relates to the undertaking of the Council at Mumbai. Secondly, it is not disputed by Mr. Shivkumar that IWSU (Internal Work Study) had approved vacancies for the posts claimed by the three workmen.

19. The result of the aforesaid discussion is the three workmen are entitled to relief of absorption as they have been continued in service as daily wagers despite the existence of vacancies for the posts occupied by. This is to say the least, was an unfair labour practice. Accordingly, it is directed that Madhukar Arjun Sapkale, Prakash M. Gudalkar and Rajshree Shetty shall be

deemed to have been absorbed as regular workmen of the Council from 15th December, 1999 i.e. from the date of filing W.P. 3075 of 1999. Arjun Sapkale is entitled to get the pay of a regular peon from that date of his absorption in Group D. He shall be made permanent as a consequence of absorption as he was serving since 14th April, 1989 and there is a vacancy. He shall be entitled for all consequential benefits including seniority and the arrears of wages. The Council shall pay him the arrears of wages if any after adjusting the amount received by him as consequence of the order of the High Court of Bombay in W.P. No.3015 of 1999. It is further directed that M. Gudalkar shall be absorbed as regular Electrician in Group C by the Council from 15th December 1999. He shall be made permanent in the existing vacancy. He shall get the pay of the Electrician in Group C post from 15th December, 1999. He shall be entitled to arrears of pay after adjustment of the pay already received by him as a consequence of orders passed by the High Court of Bombay, in W.P. No.3015 of 1995. Rajshree Shetty also shall be absorbed as Junior Stenographer by the Council in the permanent vacancy in Group C with effect from 15th December, 1999. She shall be entitled to seniority as if she continued in service without any break. However, since she did not serve as a Stenographer between 14th January 2000 to 1st March, 2002, she is not entitled to claim pay for the period as she had not stated that she was without any employment during the period. However, for all other purposes she shall be deemed to be in service. The Council shall give her all the arrears of pay in the capacity of permanent Junior Stenographer after adjusting any pay received by her in that capacity as a consequence of the order of the High Court in WP No.3015 of 1999. Shri Jayant S. Bane is not entitled to any relief by this award.

20. Accordingly, this reference is answered by the terms of this award in paragraph 19.

S.C. PANDEY, Presiding Officer

नई दिल्ली, 7 नवम्बर, 2003

का.आ. 3299.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय ई. आई. सी. आई. प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुम्बई (संदर्भ संख्या सी. जी. आई. टी- 23/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-11-2003 को प्राप्त हुआ था।

[सं. एल.-42012/257/2002-आई. आर. (सी. II)

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 7th November, 2003

S.O. 3299.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-23/2002) of the Industrial Tribunal cum Labour Court, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Export Inspection Council of India and their workman, which was received by the Central Government on 6-11-2003.

[No. L-42012/257/2002-IR(C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1

MUMBAI

Present

Shri Justice S.C. Pandey
Presiding Officer

REFERENCE NO. CGIT-23/2002

Parties : Employers in relation to the management
of
Export Inspection Council
And
Their Workmen

Appearances :

For the management	: Mr. Narayanan, Adv.
For the workman	: Mr. Mirajkar, Adv.
State	: Maharashtra

Mumbai, dated the 17th day of October 2003

AWARD

1. This is a reference made by the Central Govt. in exercise of its powers under clause (d) of Sub-section 1 of Section 10 of the Industrial Disputes Act 1947 (the Act for short) to resolve the dispute between the Export Inspection Council of India (the Council for short) and Shri Tulsidas Krishna Mahale, Shri Jethalal N. Jagodiya, Shri K.V. Singh and D.V. Krishna (All called collectively as the workmen for short). The terms of reference as per schedule are as follows :

"Whether the action of the management of Export Inspection Council of India in not regularizing Sh. Tulsidas Krishna Mahale, Sh. Jethalal N. Jagodiya, Sh. K.B. Talwar, Sh. K.V. Singh and D.V.Krishna is legal and justified? If not, to what relief they are entitled to?"

2. The workmen made the following claim in their statement of claim (a) Tulsidas K. Mahalle was serving the Council from 21st June 1982 as Peon in Group D post. Initially, the workman was paid at the rate of Rs. 8/- per day. He was given Rs. 67.50 per day. It was claimed he was not given the benefit of permanent service despite the fact he was working continuously. The workman

K.B. Talwar submitted that he was working continuously as a Peon in Group D from 30th September 1987. It was his case that he joined on 8 July, 1985. He was given technical breaks on 4th October 1985, 06th Jan 1986, 2nd April 1986, 25th June 1986, 30th December 1986, 27th March 1987 and 30th September 1987. He was given last three breaks for one day. He was employed at daily rate basis at Rs. 20/- and thereafter it was increased to Rs. 67.50 per day. The workman submitted that Council did not regularize his services despite representation. K.V. Singh too submitted that he was working as Peon from 07th May 1986 continuously. He was initially paid Rs. 20/- per day Rs. 67.50/- per day. The workman claimed that he was not absorbed as a regular peon despite his letter of request dated 19th February 1996. (b) The workman N. Jethalal Jagadiya had joined the services of the Council from 10 July, 1985 as Sweeper/Cleaner. The workman claimed that he was discharging his duties uninterruptedly from 30th September 1987. Between 10th July 1985 upto that date he was given artificial breaks of one day each on 04th October 1985, 6th January 1986, 2nd April 1986, 27th June 1986, 27th March 1987 and 30th September. He was serving as daily wager from the very inception at Rate of Rs. 20/- per day. It had been increased to Rs. 67.50 per day. The representations made by the workman by applications dated 19th Feb 1996, 04th and 05th December 1998 were not considered by the Council. D.V.Krishna was appointed as a Junior Stenographer by the Council in May 1995. It is a group C post. He claimed to have performed his functions continuously since that day as a daily wager. He was being given Rs. 99/- per day. It was over as Rs. 108/- per day. His claim for absorption was not heeded to.

3. The workman Tulsidas Mohalle, K.B. Talwar, K.V. Singh and Jethalal N. Jagodiya claimed that they fulfilled the prescribed qualification for the Group D post. The workman D.V. Krishna claimed that he was duly qualified for the post of Stenographer as Group C post. It was alleged their joint representation and that of the Union of their behalf were not considered by the Council. It is alleged that workmen were compelled to file W.P. No. 491 of 1999 before the High Court of Judicature at Bombay. The writ petition was finally disposed of by order dated 22nd August 2002 by the Division Bench of that High Court directing the Central Govt. to refer the dispute under Section 10 of the Act. All the workmen prayed that they be absorbed as permanent in the group of service with the date they joined. They be given all the monetary and other benefits flowing from the grant of the status prayed for.

4. The council in its written Statement did not dispute the fact that the reference was made by the Central Govt. on account of the order passed by the High Court of Bombay in W.P. No. 491 of 1999. However, it disputed the jurisdiction of the tribunal asserting that Council was statutory/autonomous body set up by the Ministry of

Commerce and Industry as per Section 7 (Export Quality Control and Inspection) Act, 1963. It was further asserted by the Council that all the Peons T.K. Mahalle, K.B.Talwar and K.V. Singh were working as casual labour. They were initially paid at rate of Rs. 8/- Now they are being paid Rs. 2,550/- per month from 01-6-1999 with the eligible allowance. It was alleged J. N. Jogadiya was appointed on 10-7-85 as sweeper. He was being paid Rs. 20/- then Rs. 67.50/. Therefrom 1-6-99 he was being paid Rs. 2,550/- per month plus allowance. D.V. Krishna was appointed from 22-5-99 as a Regular stenographer. He was being paid Rs. 4,000/- from 01-6-99 as basic and the eligible allowances. It was alleged that all the workmen were given the benefit of the order dated 05-5-99 passed by the High Court. They were given holidays and bonus for which they were eligible. It was further claimed that Council cannot absorb them contrary to the rules. It was also pleaded that there was a VRS floated for voluntary retirement of the employees of Council for the post of Group C and Group D. There were surplus employees as per Internal Work Study Unit through out India. No posts and vacancies were available for absorption.

5. This tribunal framed the following issues on the basis of the pleadings of the parties.

- (a) Whether the Export Inspection Council is an industry?
- (b) Whether this tribunal could consider the question in view of the order of the High Court in W.P. No. 491 of 1999?
- (c) Whether Tulsidas K. Mahale, K.B.Talwar and K.V. Singh joined the services of Export Inspection Council as Peons in the eighties? Whether they are entitled to claim regularization?
- (d) Whether J. N. Jogadiya joined the services of the Export Inspection Council as a sweeper (casual Labour) in the year 1985? Whether he is entitled to claim regularization?
- (e) Whether Shri D.V. Krishna was engaged as a junior stenographer from 1995 by the Export Inspection Council? Whether the aforesaid workman is entitled to regularization?

6. The workmen J. N. Jogadiya, K.V. Singh, K.B. Talwar, D.V. Krishna and Tulsidas Mahalle filed their affidavits. They were cross examined on behalf of the council by Shri Narayanan, Advocate. Shri. Shiv Kumar filed his affidavit on behalf of the Council. He was cross examined. Thereafter, the parties closed their case. The case was heard finally.

7. The Issue No. 1 and 2 are inter-related. They shall be answered by this tribunal here in after. The contention of the council is that it is not an industry. It cannot be disputed that after delivery of judgement in the case of

General Manager V. A. Srinivasa Rao 1977 (9) S.C. 234 the three Judge Bench of Supreme court held that Bangalore Water Supply and Sewerage Board vs. Rajappa 1978 Lab 1C 467 has to be followed for determining whether an enterprise is an industry. The triple tests laid down in that case are (i) Systematic activity (ii) Organized Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material timings or services geared to celestial bliss e.g. making on a large scale Prasad for food) *prima facie* there is an industry. It has also been held that absence of profit motive is irrelevant. Any undertaking which possesses the aforesaid three elements has to be declared an industry even though it is not a trade or business provided the employer-employee relationship in that undertaking resembles a trade or business. All those callings under taking and adventures may be treated as industries provided they satisfy the triple test even though the analogy between them and the trade or business is confined to employer-employee relationship and not others. It was further held that the strictly speaking sovereign functions may be exempted from the definition of industry but not welfare activities or economic adventures under taken by the Govt. Even in cases where three certain departments were performing sovereign functions strictly speaking, the substantially severable limits of that department can be considered to be covered by section 2(J) of the Act of the triple tests were satisfied.

8. The council is a statutory body. It advises the Govt. of India in respect of matter relating to exportable goods. It also checks quality of goods which are liable to be exported and controls the export of goods. It has been stated in the affidavit of Mr. Shiv Kumar that the council is an organization Ministry of Commerce and industry. He admitted in cross examination that testing of goods is done by Export Inspection agency working under the council. The Export (Quality And Inspection) Act 1963, provides as per 6 of that Act, the Govt. of India after consulting the Council, shall notify the commodities which shall be subject to inspection and quality control. The Council has to specify the type quality control a particular commodity shall be subjected to and the standards for the same. It is duty of council to certify the quality of exportable goods by making investigation and inspection and approve the samples as fit for export. It has its own testing houses for this purpose. It can issue the certificates through its agency certifying that the quality or specifications regarding the samples of goods satisfy the standards prescribed by the aforesaid Act. This short summary of the work of the council shows that it fulfills the triple test. It may not be doing trade or running a business. It is an undertaking of the Govt. of India. There is nothing on record to suggest that the

council or the agency performs any sovereign function. This tribunal holds that the export council provides material service for production and distribution of exportable goods to satisfy human wants and wishes. It is such an Industry. This tribunal further holds that Section 3(2) of the Act of 1963 shows that the council is a body Corporate. It has power to acquire hold and dispose of property and can sue and be sued in its name. It is not a department of Govt. of India. Therefore, Article 309 of the Constitution does not apply to it because it is not a 'State' within the meaning of Article 308 of the Constitution of India. It is an independent body. It may be controlled statutorily by the Central Government but control is confined to the powers conferred on the Central Govt. by the Statute. Looking to the nature of its organization, particularly the organization of council and the agencies, providing the conditions of service of the employees and the work performed by it can be held that the council is an industry. Its main function is to provide quality control of exportable goods by advising specification and standards and making systematic inspection and testing of samples fit to be exported. It can not escape from the definition of 'industry' under Section 2(J) of the Act. The council has failed in its attempt to show that it is not covered by 2(J) of the Act despite the fact that in the return filed in W.P. 491 of 1991 it has stated that it has been engaging some of the persons as casual labour. This is also the stand of the council before this tribunal. A casual labour is ordinarily employed in an industry.

9. This tribunal is further of the opinion that the order passed in W.P. No.491/99 shows that the council had consented to the direction given by order dated 22-8-2002 that the matter of regularization be referred to this tribunal. The Central Govt. was bound by that order and accordingly it referred the issue of regularization. The acquiescence of the council in the order dated 22-8-2002 binds it to a consistent course of conduct. It cannot approve and reprobate. The consent of council was not to a pure question of law because whether a particular undertaking calling or adventure is an industry is mixed question of law and fact. The council cannot be permitted before this tribunal to plead those fact which may take it out of the definition of Industry under Section 2(J) of the Act. That apart the orders of the High Court of Bombay in W.P. No. 499 of 1999 dated 12-2-2002 are binding on this tribunal. Right or wrong, this tribunal cannot sit in judgement over the judgement of a superior court having administrative as well as judicial power of superintendence over this it under Article 227 of the Constitution of India. The council could have approached the Constitutionally superior court or else filed an application for review. For all these reasons this tribunal rejects the arguments raised on behalf of the Council and answers issue No.1 and 2 in favour of the workmen and against the council.

10. This tribunal now takes of Issue No.3 which relates to peons in Group D. It appears from the pleadings of the parties as well as the evidence led by these workmen that T.K.Mahalle, K.B. Talwar, K.V.Singh joined as Peon in 1982, 1985 and 1986. It was not disputed in the pleadings of the Council that these workmen were continuously working without any break in service uninterruptedly in the case Mahalle and K.B. Talwar from the date they joined and in the case K.B. Talwar after 30-9-1987. Thus there is no break in service in case of all the peons at least from 1987. It is not in dispute that they were qualified to be appointed as Peons Their evidence shows that they were daily rated workers. It also clear from their evidence that they were being paid at rate of Rs.67.50 when they filed the petition. It is correct that all these workmen may not have been employed through Employment Exchange. Shri. Shivkumar in his cross examination admitted that these workmen were working continuously from 1987 without any break in service. This tribunal is of the view that Shivkumar was unable to say in cross examination how these peons had become surplus when they working in the Bombay continuously for about 12 years prior to filing of W.P. No.491 of 1999. This tribunal has examined the entire evidence of Shivkumar. He was the head of the Department of Bombay region. He could not give any proper reply to the presumption under Section 114 of the Evidence Act that looking to common course of events it shall be presumed that things that have continued for a considerable time continue as such. The rebuttal if any should have come from Shivkumar. He has failed to do so. This tribunal holds in favour of the workman that they have proved their services were required by the Council. No evidence was placed on record to prove otherwise. The Council has failed to rebut the presumption that no vacancy was available for absorbing these workman and making them permanent. The fact remains that after the orders passed by the High Court these workmen are treated on par with regular employees. Accordingly, Issue No.3 is answered.

11. The Issue No.4 relates to J.N.Jagadiya. It is undisputed that he was qualified to appointed as a Sweeper. His case is identical to that of Peons. He was appointed as a Sweeper/Cleaner as daily Wager at Rs.20/- Thereafter, he was paid Rs.67.50 per day when he filed writ petition 491/1999. He continuously working without break since 1987. On the identical reasoning as in paragraph 9 above because the facts are identical, this tribunal holds J.N.Jagadiya is entitled to claim absorption and permanency as a sweeper.

12. This takes to issue No.4 relating to D.V.Krishna, who was appointed as junior Stenographer from 1995. He is a qualified Stenographer. This facts is not in dispute. It is apparent from pleadings and evidence of D.V.Krishna that he had come to know about the vacancy from the reliable sources. He applied for the post and Shri.K.B.

Saxena the Joint Director appointed him. He was treated as a daily rated workman and was paid Rs.99/- per day. Only when the High Court passed the Order, the workman was paid regular salary. According to this witness there were three vacancies available for his post.

He denied that his post was surplus. Shivkumar, who was examined did not say specifically in paragraph 13 regarding the existence of vacancy where the workman was working. He talked of All India vacancy and was unable to say if there was any vacancy. As already stated this witness was evasive about the vacancies. He denied having come across Ex. W 13 dated 15-6-2001 Ex W 23. He was unable to say if the workman had filed an application for filling up the vacancy on the basis of Ex W-23 dated 15-6-2001 Ex W32. He admitted that the workman was appointed in place of Sunita Bhargav and from that date he continued to work as a Stenographer. The inevitable conclusion is that the services of the workman were required all these years and the Council has failed to rebut the presumption in favour of the workman. Thus, the issue No.4 is answered in favour of the workman and against the Council.

13 This tribunal has considered the facts in detail that three workmen named above fulfill qualification prescribed for recruitment of their posts. The rules and other documents filed on behalf of the council do not initiate against the aforesaid findings. The workmen have worked for considerable period. The council continued to employ them as daily rated worker when there was vacancy available with the council. The long continuance of the workman militates against the agreement that one of them was not employed through Employment Exchange. In Industrial dispute a rigid attitude has not to be adopted by giving advantage to the stronger party who sought to exploit the weaker party i.e. the unorganized labour. Shivkumar implicitly admitted that in each case there was a vacancy. The fact that they were continued showed that the Council needed their services. There can be no better proof of the requirement of the Council.

Section 2 (ra) of the Act defines 'unfair labour practice' to mean those practices that have been mentioned in the Fifth Schedule. Section 25 T of the Act issues a legislative command to the employer, a Trade union or a workman prohibiting them from committing unfair labour practices mentioned in the Fifth Schedule on their part respectively. The first part of Fifth Schedule enumerates the unfair labour practices which are prohibited in the case of an employer. It is an unfair labour practice under item No. 10 to employ workmen as 'badlis' 'casuals' or temporaries and to continue them as such for years, with the object of depriving them of status and privileges of workmen." It is also clear that as per section 25 U of the Act, the violation of section 25 T would be an offence punishable with maximum sentence

of six months or with fine which may extend to Rs.1000/- or with both. In the opinion of this tribunal chapter V whereby the sections 25 S and 25 T inserted were in the Act w.e.f.21/8/1984 has made a difference by prohibiting commission of unfair labour practice and providing a sentence for commission of an unfair labour practice. This tribunal is entitled to take note of this fact while granting relief to the workmen on its findings that the workmen were unfairly deprived of their rights by the Council. It may also be noticed that the Council is a Statutory body as already noticed. The Council may not be a department of the Central Govt. but the evidence of Shivkumar shows that it is an organization serving under the Ministry of Commerce and Industry. It is controlled by Ministry of Commerce and Industry. He has stated that study of IWSU of Ministry of Commerce and Industries is applicable because it is controlled by Ministry of Commerce and Industry. It has already been pointed out that the Council is a body Corporate. The control of Central Govt. appears to be deep and pervasive as per evidence led by the Council. It is therefore a State within Article 12, though not under Article 308. Therefore, Article 21, 14, 15 and 16 of the Constitution shall be applicable to the employees of the Council. It may also be noticed that Article 36 of the Constitution adopts the same definition of State as is given in Article 12. The fundamental principles of governance of the country laid down in Part IV shall also be applicable to the Council. The Article 38, 39 (d) of the Constitution inter alia have to be applied by the Council as fundamental in the governance of its affairs. The Article 21 of the Constitution unlike in the past, has been given a wider connotation by the Supreme Court in number of cases to include the right of life. A rough and ready one line summary of the decisions of Supreme Court interpretation of Article 14, 21 read in light of Article 38 and 39 may be that a citizen of this country is entitled to lead his life with dignity appropriate to his status, in the opinion of this tribunal, the item No. 10 of the Fifth Schedule of the Act endeavours to give the benefit of Article 38 and 39 (a) of Constitution by way of legislation made by the Central Govt. to all industries. The Council is directly covered by these Articles. This tribunal is entitled to interpret the Act and the item No. 10 in the light of the fundamental rights as interpreted by the Supreme Court following the direction given in Directives Principles of State Policy. It has to be said that the Constitution is the mother of all laws and therefore, what has been provided in the Constitution can be noticed while interpreting and implementing a statute which truly owns its origin to the Constitution. Consequently, this tribunal adjudicates the rights of these workmen in light of Section 25 S and 25 T read with item No. 10 of Fifth schedule of the Act consonance with the Constitution. What is prohibited and made punishable as unfair

Labour practice, cannot be justified by the Council on the ground that the Commerce and Industry Ministry had floated a voluntary retirement scheme for reducing the number of surplus employees.

15. The Council has chosen to rely on the decision of Steel Authority of India vs. National union Water Front Workers J.T. 2001(7) SCC 269. This case is mainly an authority for the proposition that abolition of labour contract. On issuance of notification by the appropriate Govt. does not result in automatic absorption of employees in the industry wherein the labour was employed through a contractor. The Supreme Court overruled its earlier decision Air India vs. Union of India Jt 1996 4 366 prospectively. The other points discussed in the case have no bearing on the questions involved in this case. The Council has relied upon the decision of a learned Single Judge of Madras High Court Exhibit M 13. The decision is distinguishable because that case was filed under Article 226 of the Constitution. The learned single Judge was considering posts created for a project which was to last for a limited period.

16. This tribunal states that the office of Council at Bombay cannot justify non-absorption of these workmen on the basis of All India Statistical statements. Firstly, the industrial dispute relates to the undertaking of the Council at Mumbai.

17. This tribunal is further of the view that the Council cannot take advantage of the fact that workman were not sponsored by the employment exchange. This aspect of the matter loses its significance because the workman continued for a long time sufficient to justify their liberty. The Council cannot use its own lack of concern for law as a sword to attack the workmen. The industrial law vests in the industrial adjudicatory power to condone such lapses. The time that the workman have spent in the service of council validates their sojourn with the Council. This tribunal is of the view that judgement of Madras High Court Ex M/13 relied upon by the Council is not appropriate. The consideration for exercise of writ jurisdiction under Article 226 of the Constitution is very different. It appears that the learned Single Judge of that Court was dealing with the posts created temporarily for a scheme which had come to an end. This is not so here. This tribunal answers the reference by stating that workman Shri Tulsidas Krishna Mahale, K.B.Talwar and K.V. Singh are entitled to be absorbed and permanent as Peons and Shri. Jethlal N.Jogdiya as a Sweeper in Group D of posts. Shri D.V.Krishna is directed to absorbed and made permanent in Group C post as a Junior Stenographer. All the workman shall be absorbed and made permanent from the date of filing W.P. No.491 of 1999 in the High Court that is 3rd February 1999. They shall get their seniority from that date. It is further directed that all these workman shall be entitled

to receive full pay as regular holder of their post from 03rd Feb 1999. The Council shall pay their arrears of their pay after adjusting the amount already received by them including the extra amount received as a consequence of the order of the High Court. No. costs.

S.C. PANDEY, Presiding Officer

नई दिल्ली, 7 नवम्बर, 2003

का.आ. 3300.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एंड जयपुर के प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकारण/लेबर कोर्ट, जोधपुर के पंचाट (संदर्भ संख्या आई डी० सं० 5/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-11-2003 को प्राप्त हुआ था।

[सं. एल.-12012/203/1999-आई. आर. (बी. I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 7th November, 2003

S.O. 3300.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 5/2000) of the Industrial Tribunal/Labour Court, Jodhpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner & Jaipur and their workman, which was received by the Central Government on 06-11-2003.

[No. L-12012/203/1999-IR (B-1)]

AJAY KUMAR, Desk Officer

अनुबन्ध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय

जोधपुर

पीठासीन अधिकारी : श्रीमती निशा गुप्ता, आर० एच० जे० ए०

औ० वि० (केन्द्रीय) सं० : 05/2000

दी यूनिट सेक्रेटरी,

स्टेट बैंक ऑफ बीकानेर एंड जयपुर एम्प्लाईज यूनियन,

राजस्थान यूनिट,

बालोतरा।

प्राप्ती

बनाम

उप महाप्रबन्धक,

अंचल कार्यालय,

स्टेट बैंक ऑफ बीकानेर एंड जयपुर,

शास्त्रीनगर,

जोधपुर।

प्राप्ती

उपस्थिति :

- (1) प्रार्थी प्रतिनिधि श्री ललित शर्मा उप०
- (2) अप्रार्थी की ओर से कोई हाजिर नहीं।

अधिनिर्णय

दिनांक 31-7-2003

श्रम मंत्रालय भारत सरकार नई दिल्ली ने अपनी अधिसूचना क्रमांक एल० 12012/203/99/आई० आर० (बी० १) दिनांक 30-9-1999 से निम्न विवाद् वास्ते अधिनिर्णय इस न्यायालय को प्रेषित किया है।

"Whether the action of the Assistant General Manager, State Bank of Bikaner & Jaipur, Jodhpur Zone by non-payment of orthopaedically handicap conveyance allowance to Shri Arjun Lal Meena Clerk/ Cashier w.e.f. 05-02-90 is legal & justified. If not what relief the concerned workman is entitled to?"

प्रार्थी यूनियन ने मांग-पत्र प्रस्तुत करते हुए अभिकथित किया कि श्री अर्जुनलाल मीणा लिपिक/रोकड़िया के पद पर बालोतरा मुख्य शाखा में दिनांक 5-2-90 से सेवारत् थे एवं वर्तमान में स्थानान्तरण के कारण उनियारा जिला टोंक में कार्यरत् हैं, प्रार्थी नियुक्ति तिथि से पूर्व एवं बचपन से ही स्थायी रूप से एक आंख से दृष्टिहीन है जो विकलांग की श्रेणी में आता है एवं शारीरिक रूप से विकलांगों के लिए राजस्थान नियोजन नियम 1976 के नियम 2 उप नियम (5) के क्लॉज़ (सी) के अन्तर्गत सक्षम नेत्र विशेषज्ञ द्वारा प्रमाण-पत्र जारी किया गया है, कनिष्ठ विशेषज्ञ (नेत्र) राजकीय नाहटा हॉस्पीटल बालोतरा द्वारा भी प्रमाण-पत्र जारी किया गया है। भारतीय बैंकर्स संस्थान मुम्बई ने प्रार्थी के शारीरिक रूप से विकलांग होने की पुष्टि एवं संतुष्टि के पश्चात् शारीरिक रूप से विकलांग अभ्यर्थियों के लिए परीक्षा समय में उपलब्ध विशेष छूट की है। अप्रार्थी द्वारा जारी संदर्भित परिपत्र में वर्णित पैरा अप्रार्थी नियोजक का सुस्पष्ट रूप से स्वीकृत तथ्य है कि एक आंख की दृष्टि न होने पर भी वह अभ्यर्थी शारीरिक रूप से अपांग अभ्यर्थी की श्रेणी में आयेगा। अप्रार्थी द्वारा परिपत्र दिनांक 5-5-1982 में अंधे विकलांग कर्मचारियों को सवारी भत्ते का भुगतान करने का स्पष्टीकरण दिया गया है अतः इस आधार पर प्रार्थी सवारी भत्ते का भुगतान प्राप्त करने का अधिकारी है, प्रार्थी की एक आंख स्थायी रूप से विकलांग है उसे बैंक में आने-जाने में असुविधा रहती है अतः इस आधार पर प्रार्थी वाहन भत्ता प्राप्त करने का अधिकारी है किन्तु अप्रार्थी नियोजक तरह-तरह के बहाने बनाकर प्रार्थी को अंधे/शारीरिक रूप से अपांग कर्मचारियों को वाहन भत्ता का भुगतान नहीं कर रहा है। अन्त में निवेदन किया है कि प्रार्थी को उसकी नियुक्ति की तिथि दिनांक 5-2-90 से ही शारीरिक रूप से विकलांग कर्मचारियों को देव वाहन भत्ता दिये जाने का अदेश पारित किया जावे। अप्रार्थी द्वारा जानबूझकर रोकी गई राशि पर 12 प्रतिशत व्याज भी दिलाया जावे।

अप्रार्थी की ओर से जवाब प्रस्तुत किया जिसमें प्राप्तिक आपत्तियों में कहा गया कि प्रार्थी यूनिट सेक्रेट्री स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर एम्प्लाईज़ यूनियन का सदस्य नहीं है अतः उक्त यूनियन को प्रार्थी का विवाद् प्रमुख करने का अधिकार प्राप्त नहीं है, प्रार्थी वर्तमान में उनियारा जिला टोंक में कार्यरत् है अतः प्रार्थी बालोतरा यूनिट के

सदस्य हो ही नहीं सकते फिर भी यूनिट बालोतरा के सेक्रेट्री द्वारा मांग-पत्र प्रस्तुत किया है जो निरस्त किये जाने योग्य है, यह भी स्पष्ट नहीं है कि उक्त यूनियन मान्यता प्राप्त यूनियन है अथवा नहीं, प्रार्थी का क्लैम रेफरेन्स की टर्म के बाहर है अतः इस आधार पर भी निरस्त किए जाने योग्य है। आगे जवाब में कहा गया है कि प्रार्थी अपांग नहीं है न ही फिजीकली हैण्डीकेप्ट है, प्रार्थी शारीरिक रूप से भी किसी प्रकार विकलांग नहीं है, अपांगता एवं शारीरिक विकलांगता में अन्तर है इसलिये प्रार्थी की एक आंख की दृष्टि न होते हुए भी शारीरिक रूप से हैण्डीकेप्ट नहीं है, अप्रार्थी द्वारा जारी सर्कूलर दिनांक 12-12-79 से स्पष्ट है कि वाहन भत्ता अंधे/शारीरिक रूप से विकलांग कर्मचारियों को ही देय है चौंक प्रार्थी न तो अंधा है न ही शारीरिक रूप से विकलांग है अतः उसे सवारी भत्ता देय नहीं है, एक आंख वाला व्यक्ति न तो बलाईन्ड होता है तथा न ही ओर्थोपोइडकली हैण्डीकेप्ट होता है, एक आंख से दृष्टिहीन व्यक्ति को सवारी भत्ता प्रदान करने का कोई प्रावधान नहीं है, एक आंख वाले व्यक्ति को बैंक में आने-जाने में कोई असुविधा नहीं रहती है। अन्त में निवेदन किया है कि प्रार्थी नियुक्ति तिथि से या अन्य किसी तिथि से वाहन भत्ता प्राप्त करने का अधिकारी नहीं है, वाहन भत्ता देय नहीं है इसलिये व्याज अदा करने का कोई प्रश्न ही पैदा नहीं होता अतः प्रार्थी अप्रार्थी बैंक से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है, प्रार्थी का मांग-पत्र हर्ज़ सहित खारिज किया जावे।

प्रार्थी ने मांग-पत्र के समर्थन में स्वयं का शपथ-पत्र प्रस्तुत किया जिसपर अप्रार्थी द्वारा जिरह की गई तथा अप्रार्थी की ओर से वाई० एन० भटनागर का शपथ-पत्र प्रस्तुत किया जिस पर प्रार्थी प्रतिनिधि द्वारा जिरह की गई। दोनों पक्षों की ओर से विभिन्न दस्तावेजात की फोटो स्टेट प्रतियां पेश की गई।

प्रार्थी प्रतिनिधि की बहस सुनी, पत्रावली का अवलोकन किया।

प्रार्थी द्वारा यह कहा गया कि वह विपक्षी के अधीन कार्यरत् है और नियुक्ति की तिथि के पूर्व से ही वह एक आंख से दृष्टिहीन है ऐसी स्थिति में उसे शारीरिक रूप से विकलांग की श्रेणी में माना गया, उसका स्थानान्तरण भी इस आधार पर किया गया, उसने इसी आधार पर परीक्षा पास की वह शारीरिक रूप से विकलांग की श्रेणी में आता है उसके बाबजूद भी उसे सवारी भत्ते का भुगतान नहीं कर चुटी की गई है अतः उसे 5-2-90 से ही शारीरिक रूप से विकलांग व्यक्तियों का वाहन भत्ता दिलाया जावे।

विपक्षी द्वारा अपने जवाब में यह कहा गया है कि प्रार्थी एक आंख से दृष्टिहीन है इस प्रकार वह शारीरिक रूप से विकलांग की श्रेणी में नहीं आता।

प्रार्थी की ओर से 16-3-93 का प्रमाण-पत्र पेश हुआ है जिसमें उसे शारीरिक रूप से विकलांग दिखलाया गया है। विकलांग होने से उसका स्थानान्तरण हेतु जो आवेदन को अग्रप्रेरित किया गया है उसकी प्रति पेश हुई है। इसी प्रकार उसे परीक्षा में दस मिनट अतिरिक्त दिये गये हैं। शारीरिक रूप से अपांग अभ्यर्थियों के सम्बन्ध में जो नियम पेश हुए हैं उसमें भी एक आंख की दृष्टि न होना अपांगता माना गया है। परन्तु इन प्रमाण-पत्रों और निर्देशों का वाहन भत्ते से संबंध नहीं है। यह निर्देश उसमें वर्णित विषयों तक सीमित है। प्रार्थी का स्थानान्तरण विकलांग के आधार पर किया जा सकता है अथवा उसे संबंधित नियमों के अनुरूप

एक आंख से दिखता था इस कारण दस मिनट की अवधि परीक्षा में अतिरिक्त दी गई, वाहन भत्ते के संबंध में 119/88 का सर्कूलर पेश हुआ है जिसमें यह स्पष्ट किया गया है कि वाहन भत्ता उन व्यक्तियों को प्राप्त होगा जो अन्य/Orthopaedically handicap हैं जब कि प्रार्थी इस त्रैणी में नहीं आता। इसी संबंध में 128/83 का सर्कूलर भी पेश हुआ है इसी क्रम में 6/90 का सर्कूलर भी पेश हुआ है जो कि पूर्व के सर्कूलरों के अनुपालन में जारी किया गया है। इस प्रकार इन सर्कूलरों से यह स्थिति स्पष्ट है कि जो व्यक्ति अन्या है अथवा Orthopaedically handicap है उन्हें ही वाहन भत्ता प्राप्त होगा जब कि प्रार्थी ने अपनी प्रतिपरीक्षा में यह स्पष्ट स्वीकार किया है कि वह हड्डी की बीमारी से अपंग नहीं है और न ही अन्धा है। ऐसी स्थिति में नियमों के अनुरूप वह वाहन भत्ता प्राप्त करने का अधिकारी नहीं था। विष्कृ की ओर से वाई० एन० भट्टनागर पेश हुए हैं जिन्होंने संबंधित दस्तावेजात को स्वीकार किया है परन्तु इन दस्तावेजात से ही यह स्थिति स्पष्ट है कि प्रार्थी नियमों के अनुरूप वाहन भत्ता प्राप्त करने का अधिकारी नहीं है क्योंकि वाहन भत्ता प्राप्त करने के संबंध में विशिष्ट दिशा निर्देश जारी हुए हैं और प्रार्थी हड्डी की बीमारी से अपंग न होने के कारण व अन्या न होने के कारण वाहन भत्ता प्राप्त करने का अधिकारी नहीं है, उसे अन्य सुविधाएँ प्राप्त हो रही हैं, केवल इस आधार पर वह वाहन भत्ता भी प्राप्त कर सकता है ऐसी स्थिति नहीं है क्योंकि वाहन भत्ते के संबंध में विशेष दिशा निर्देश जारी किए गए हैं और इन्हीं दिशा-निर्देशों के अनुरूप प्रार्थी को 5-7-94, 30-6-94, 27-6-94, 22-6-94, 13-10-93, 14-10-93, 9-12-94 व 7-12-1994 के पत्र लिखे गये हैं और यही पत्र संबंधित शाखाओं को भेजे गए हैं इस प्रकार प्रार्थी को वाहन भत्ता न देकर विष्कृ द्वारा कोई त्रुटि नहीं की गई है और प्रार्थी कोई अनुतोष पाने का अधिकारी नहीं है।

अधिनिर्णय

अतः यह अधिनिर्णित किया जाता है कि अप्रार्थी नियोजक उप महाप्रबन्धक अंचल कार्यालय, स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर, शास्त्रीनगर, जोधपुर द्वारा प्रार्थी अर्जुनलाल भीणा बलर्क/केशीयर को वाहन भत्ता 5-2-90 से न देकर कोई त्रुटि नहीं की गई है। प्रार्थी अप्रार्थी नियोजक से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

यह अधिनिर्णय आज दिनांक 31-7-2003 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया।

निशा गुप्ता, न्यायाधीश

नई दिल्ली, 7 नवम्बर, 2003

का.आ. 3301.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण /लेबर कोर्ट, जोधपुर के पंचाट (संदर्भ संख्या आई० डी० सं० 35/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-11-2003 को प्राप्त हुआ था।

[सं. एल.-12012/7/2001-आई. आर. (बी. I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 7th November, 2003

S.O. 3301.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 35/2001) of the Industrial Tribunal/Labour Court, Jodhpur now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 06-11-2003.

[No. L-12012/7/2001-IR (B-I)]
AJAY KUMAR, Desk Officer

अनुबन्ध

औद्योगिक विवाद अधिकरण एंव श्रम न्यायालय

जोधपुर

पीठासीन अधिकारी : श्रीमती निशा गुप्ता, आर० एच० जै० एम०

औ० विं० (केन्द्रीय) सं० : 35/2001

डिस्ट्री जनरल सेक्रेटरी,
राजस्थान (स्टेट) बैंक वर्कर्स आरोग्याईजेशन द्वारा
एस०बी०बी०जै० सुराणा मार्केट,
पाली मारवाड़ (राज०)

प्रार्थी

बनाम

शाखा प्रबन्धक,
एस० बी० आई० शाखा
रानी जिला पाली
मारवाड़
(राज०)

प्रार्थी

उपस्थिति :

- (1) प्रार्थी प्रतिनिधि श्री ललित शर्मा उप०
- (2) अप्रार्थी इकतरफा।

अधिनिर्णय

दिनांक 4-08-2003

श्रम मंत्रालय भारत सरकार नई दिल्ली ने अपनी अधिसूचना क्रमांक एल० 12012/7/2001/आई० आर० (बी० 1) दिनांक 11-4-2001 के द्वारा निम्न विवाद वास्ते अधिनिर्णय इस न्यायालय को प्रेषित किया है।

“Whether the action of the Management of State Bank of India, Branch Rani Distt. Pali in terminating the services of Shri Raju Lal S/o Shri Mangi Lal, Ex. Canteen Boy w.e.f. 6-1-2000 is legal & justified? If not what relief the concern workman is entitled to?”

प्रार्थी ने अपना मांग-पत्र प्रस्तुत करते हुए अभिकथित किया कि प्रार्थी कर्मचारी संघ एक पंजीकृत व्यवसायिक कर्मचारी संघ है एवं श्रमिक राजुलाल कर्मचारी संघ का सदस्य है, श्रमिक राजुलाल ने दिनांक 5-6-96 से 5-1-2000 तक नियमित रूप से लगातार बैंक में ईनिक

वेतन पर कार्य किया जिसकी दैनिक मजदूरी का भुगतान मासिक वेतन एंव बैंकर चैक के माध्यम से किया गया, प्रार्थी से उक्त अवधि में निरन्तर चतुर्थ श्रेणी कर्मचारी का कार्य लिया जाता रहा इसके अतिरिक्त प्रार्थी से केन्टीन का कार्य भी लिया गया, प्रार्थी ने नियमित एंव स्थाई चतुर्थ श्रेणी कर्मचारी के समस्त कर्तव्यों का निष्पादन कार्यों का कार्य किया जिसमें बैंक में वाउचर्स की सिलाई करना, बैंक के दस्तावेजों एंव पत्र इत्यादि की फाइलिंग करना, रानी नगर में अवस्थित अन्य शाखाओं की समाशोधन (क्लीयरिंग) के चैकों को लाना व ले जाना, बैंक द्वारा प्रेषित सूचना ग्राहकों को पहुंचाना, बैंक परिसर में सफाई करना, बैंक में स्टेशनरी जमाना, बैंक में पानी भरना, पोस्ट ऑफिस से बैंक की डाक लाना व डाक ले जाना, बैंक का जनरेटर चालू व बन्द करना, केन्टीन में कार्य करना, बैंक के लिए बाजार से सामग्री क्रय करके लाना आदि कार्य किया, उक्त अवधि में प्रार्थी का कार्य निर्बाध एंव पूर्णतया संतोषप्रद रहा। प्रार्थी की नियुक्ति स्थाई चतुर्थ श्रेणी कर्मचारी के पद के विरुद्ध की गई। प्रार्थी का कथन है कि उसे वर्ष 1996 से 1998 तक 350/- रुपये प्रतिमाह वेतन के रूप में दिये गये एंव वर्ष 1999 में 500/- रुपये प्रतिमाह की दर से वेतन का भुगतान किया गया, प्रार्थी से 5-6-96 से 5-1-2000 तक नियमित रूप से आठ घण्टे से अधिक समय काम लिया गया एंव अधिक समय कार्य के लिए किसी प्रकार का अतिरिक्त भत्ते का भुगतान नहीं किया गया, केन्द्रीय एंव राज्य-सरकार द्वारा घोषित न्यूनतम वेतन का भुगतान भी नहीं किया गया दिनांक 6-1-2000 को बैंक के तत्कालीन शाखा प्रबन्धक ने मौखिक आदेश से प्रार्थी को सेवा पर आने से मना कर दिया, सेवापृथक करने से पूर्व कोई आरोप-पत्र नहीं दिया, न ही कोई जाँच की गई, हटाने से पूर्व कोई कारण नहीं बताया गया न ही कोई नोटिस, नोटिस वेतन व छंटनी मुआवजा दिया गया, प्रार्थी सेवापृथकता से आज तक बेरोजगार है, प्रार्थी का कथन है कि उसकी सेवापृथकता से पूर्व अप्रार्थी ने धारा 25-एफ, 25-एन, 25-जी व 25-एच के प्रावधानों की पालना नहीं की तथा नियम 77 की भी अनुपालना नहीं की, वरिष्ठता सूची जारी नहीं की अतः सेवा समाप्ति पूर्णतया अनुचित एंव अवैध है। अन्त में निवेदन किया कि प्रार्थी को सेवा की निरन्तरता में पूर्ण पूर्वभूति सहित सेवा में पुनर्स्थापित किये जाने का अधिनिर्णय पारित किया जावे।

अप्रार्थी की ओर से जवाब प्रस्तुत करते हुए कहा है कि प्रार्थी बैंक का कभी भी कर्मचारी नहीं रहा है इसलिये प्रार्थी किसी भी कर्मचारी संघ का सदस्य नहीं रहा, अतः यूनियन को यह बाद, प्रस्तुत करने का अधिकार नहीं है। आगे जवाब में कहा है कि प्रार्थी अप्रार्थी बैंक की किसी भी शाखा में कर्मचारी के पद पर कार्यरत नहीं रहा, प्रार्थी ने बैंक से जो राशि प्राप्त की है वह लॉकल इम्प्लीमेन्टेशन कमेटी के कर्मचारी के रूप में प्राप्त की है, प्रार्थी द्वारा प्रस्तुत रसीदों के अवलोकन से प्रार्थी किसी भी हालत में बैंक का कर्मचारी नहीं माना जा सकता। बैंक की शाखाओं में विभिन्न कर्मचारियों द्वारा एक वेलफेयर कमेटी गठित की जाती है तथा कर्मचारियों को देय वेतन में से प्रत्येक कर्मचारी उक्त कमेटी में निर्धारित अनुदान देते हैं, उक्त कमेटी का काम बैंक में केन्टीन चलाना है, उक्त केन्टीन के प्रभारी बैंक के ही कर्मचारी होते हैं तथा केन्टीन का काम बैंक कर्मचारियों को समय-समय पर चाय, पानी एंव नाश्ता आपूर्ति करते हैं, उक्त कार्य हेतु केन्टीन में उक्त लॉकल इम्प्लीमेन्टेशन कमेटी अपनी सुविधानुसार किसी भी व्यक्ति को केन्टीन बॉय के रूप में रखती जिसके वेतन का भुगतान भी उक्त कमेटी द्वारा किया जाता है, केन्टीन बॉय एंव बैंक के मध्य किसी प्रकार का कोई

संबंध नहीं होता तथा न ही बैंक द्वारा उक्त केन्टीन बॉय को नियुक्ति किया जाता है, माननीय उच्चतम न्यायालय द्वारा यह विशेष रूप से सिद्धांत प्रतिपादित किया है कि बैंक में केन्टीन संचालित करने हेतु उक्त व्यक्ति किसी भी हालत में बैंक का कर्मचारी नहीं है, प्रार्थी लॉकल इम्प्लीमेन्टेशन कमेटी द्वारा संचालित केन्टीन में केन्टीन बॉय के पद, पर जरूरत कार्यरत रहा है परन्तु बैंक का कभी भी कर्मचारी नहीं रहा, अतः बैंक में चतुर्थ श्रेणी कर्मचारी के पद पर काम किये जाने का कोई प्रश्न ही नहीं है। बैंक में नियुक्ति के लिए एक निर्धारित प्रक्रिया है तथा उक्त प्रक्रिया के अनुरूप ही बैंक कर्मचारी को नियुक्ति दी जाती है व नियुक्ति-पत्र जारी किया जाता है, प्रार्थी को ऐसा कोई नियुक्ति-पत्र जारी नहीं किया, जब अप्रार्थी द्वारा प्रार्थी को नियुक्ति ही नहीं दी गई तो सेवापृथक करने को प्रश्न ही पैदा नहीं होता, प्रार्थी व अप्रार्थी के मध्य कभी भी कर्मचारी-नियोक्ता के संबंध नहीं रहे अतः धारा 25-एफ, 25-एन, 25-जी एंव 25-एच की पालना करने का कोई प्रश्न ही नहीं है न ही नियम 77 की पालना किये जाने का कोई प्रश्न है। यह भी कहा है कि प्रार्थी अप्रार्थी बैंक में कभी भी अंशकालीन कर्मचारी तक नहीं रहा। मजोद-उत्तरत में कहा है कि प्रार्थी ने लॉकल इम्प्लीमेन्टेशन कमेटी को पक्षकार नहीं बनाया है, प्रार्थी किसी बैंक कर्मचारी यूनियन का सदस्य नहीं है अतः यूनियन द्वारा प्रार्थी की ओर से जो कार्यवाही की गई है वह अनुचित है। अन्त में निवेदन किया है कि प्रार्थी का मांग-पत्र मय हर्जे-खर्च खारिज किया जावे।

प्रार्थी ने मांग-पत्र के समर्थन में स्वयं का शपथ-पत्र प्रस्तुत किया। दिनांक 24-4-03 को अप्रार्थी की ओर से कोई उपस्थित नहीं हुआ जिसपर उसी रोज अप्रार्थी के विरुद्ध कार्यवाही इकतरफा का आदेश पारित किया। प्रार्थी की ओर से विभिन्न दस्तावेजों की फोटो स्टेट प्रतियां पेश की गईं।

प्रार्थी प्रतिनिधि की बहस सुनी, पत्रावली का अवलोकन किया।

प्रार्थी द्वारा अपने मांग-पत्र के समर्थन में प्रस्तुत किये गये शपथ-पत्र में यह कथन किया है कि उसने दिनांक 5-7-96 से 5-1-2000 तक अप्रार्थी के अधीन नियमित रूप से लगातार दैनिक वेतन पर कार्य किया जिसकी दैनिक मजदूरी का उसे भुगतान मासिक वेतन एंव बैंकर चैक के माध्यम से किया गया, प्रार्थी का यह कथन है कि उससे उक्त अवधि में निरन्तर चतुर्थ श्रेणी कर्मचारी का कार्य लिया जाता रहा तथा इसके अलावा उससे केन्टीन का कार्य भी लिया गया, उसने बैंक में नियमित चतुर्थ श्रेणी कर्मचारी के अनुरूप समस्त कार्य किये, उसे वर्ष 1996 से 1998 तक 350/- रुपये प्रतिमाह वेतन के रूप में दिये गये एंव वर्ष 1999 में 500/- रुपये प्रतिमाह की दर से वेतन का भुगतान किया गया तथा उससे 5-6-96 से 5-1-2000 तक नियमित रूप से आठ घण्टे से अधिक काम लिया गया तथा 6-1-2000 को बैंक के तत्कालीन शाखा प्रबन्धक ने मौखिक आदेश से उसे सेवामुक्त कर दिया, सेवामुक्त करने से पूर्व कोई आरोप-पत्र नहीं दिया न ही कोई जाँच की गई, कोई नोटिस, नोटिस वेतन व छंटनी मुआवजा नहीं दिया, सेवा समाप्ति से पूर्व कोई वरिष्ठता सूची भी जारी नहीं की गई एंव औद्योगिक विवाद, अधिनियम के प्रावधानों का उल्लंघन करते हुए उसकी सेवाएं समाप्त की गई जो अनुचित एंव अवैध है।

हॉलांकि अप्रार्थी की ओर से जवाब पेश किया गया है जिसमें कहा है कि प्रार्थी बैंक का कर्मचारी नहीं था, प्रार्थी लॉकल इम्प्लीमेन्टेशन कमेटी द्वारा संचालित केन्टीन बॉय के पद पर कार्यरत रहा एंव चतुर्थ श्रेणी कर्मचारी के पद पर काम किये जाने का कोई प्रश्न पैदा

नहीं होता लेकिन उक्त जबाब को किसी साक्ष्य से पुष्ट नहीं किया है, तथा प्रार्थी की साक्ष्य का कोई खण्डन नहीं किया गया है। अतः प्रार्थी की ओर से पत्रावली पर जो साक्ष्य पेश की गई है उससे प्रार्थी का 5-6-96 से 5-1-2000 तक चतुर्थ श्रेणी कर्मचारी के रूप में अप्रार्थी के अधीन कार्य करना व एक कलेंडर वर्ष में लगातार 240 दिन से अधिक कार्य करना प्रमाणित है, अप्रार्थी की ओर से किसी साक्ष्य के माध्यम से यह सिद्ध नहीं किया गया है कि प्रार्थी लोकल इम्प्लाईमेन्ट्स कमेटी द्वारा संचालित केन्टीन में केन्टीन बॉय के पद पर कार्यरत् था। इस प्रकार प्रार्थी के उक्त मांग-पत्र व शपथ-पत्र का कोई खण्डन विपक्षी की ओर से नहीं किया गया है अतः प्रार्थी के मांग-पत्र व शपथ-पत्र ते प्रार्थी का अप्रार्थी के अधीन सेवा मुक्ति दिनांक 6-1-2000 से पूर्व के एक कलेंडर वर्ष में लगातार 240 दिन से अधिक कार्य करना व सेवामुक्ति से पूर्व अप्रार्थी द्वारा प्रार्थी को एक माह का नोटिस, नोटिस वेतन व छंटनी मुआवजा नहीं दिया जाना प्रमाणित है ऐसी स्थिति में धारा 25-एफ औ. वि. अधिनियम के आदेशात्मक प्रावधानों की पालना नहीं होने से प्रार्थी की सेवामुक्ति निःसंदेह अनुचित एवं अवैध है।

प्रार्थी की सेवामुक्ति 20-1-2000 को की गई जब कि यह रेफरेन्स अम मंत्रालय भारत सरकार द्वारा इस न्यायालय को 11-4-2001 को प्रेषित किया गया है, यह स्थिति भी सही है कि प्रार्थी ने 6-1-2000 के पश्चात् विपक्षी के अधीन कोई काम नहीं किया है अतः समस्त तथ्यों एवं परिस्थितियों को देखते हुए प्रार्थी को रेफरेन्स की तिथि 11-4-2001 से आदेश की पालना तक 25 प्रतिशत राशि पूर्व भूति के रूप में दिलाई जाती है।

अधिनिर्णय

अतः यह अधिनिर्णित किया जाता है कि शाखा प्रबन्धक स्टेट बैंक ऑफ इण्डिया शाखा रानी जिला पालीद्वारा श्रमिक श्री राजुलाल पुत्र श्री मांगीलाल की 6-1-2000 से सेवामुक्ति अनुचित एवं अवैध है। अतः आदेशित किया जाता है कि अप्रार्थी नियोजक प्रार्थी को तुरन्त सेवा में पुर्णस्थापित करे, प्रार्थी की सेवाएं निरन्तर मानी जावेंगी, प्रार्थी रेफरेन्स की तिथि 11-4-2001 से आदेश की पालना तक अप्रार्थी नियोजक से 25 प्रतिशत राशि पूर्व भूति के रूप में प्राप्त करेगा।

यह अधिनिर्णय आज दिनांक 4-8-2003 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया।

निशा गुप्ता, न्यायाधीश

नई दिल्ली, 7 नवम्बर, 2003

का.आ. 3302.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोटिन रेलवे के प्रबंधत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण /लेबर कोर्ट, जोधपुर के पंचाट (संदर्भ संख्या आई डी० 27/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-11-2003 को प्राप्त हुआ था।

[सं. एल.-41012/149/99-आई.आर. (बी. 1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 7th November, 2003

S.O. 3302.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 27/2001) of the Industrial Tribunal/Labour Court, Jodhpur now as shown in the annexure in the Industrial Dispute between

the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 6-11-2003.

[No. L-41012/149/99-JR (B-1)]

AJAY KUMAR, Desk Officer

अनुबन्ध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय

जोधपुर

पीठासीन अधिकारी : श्रीमती निशा गुप्ता, आर० एच० जे० एस०

औ० वि० (केन्द्रीय) सं० : 27/2001

महामंत्री रेलवे केजुअल लेबर यूनियन,

झागा स्कूल के पास (334005)

अधिकृत प्रतिनिधि,

श्री मोहनलाल पुत्र श्री मालीराम,

मैसन उत्तर पश्चिम रेलवे,

चुरू।

प्रार्थी

बनाम

- मण्डल रेल प्रबन्धक,
कार्यालय उत्तर पश्चिम रेलवे,
बीकानेर।
- सचिव,
रेल मंत्रालय,
रेलवे बोर्ड,
रेल भवन,
नई दिल्ली (110001)

अप्रार्थी

उपस्थिति :

- प्रार्थी प्रतिनिधि श्री भरत सिंह सेगर उ०
- अप्रार्थी प्रतिनिधि श्री हरीश माथुर उ०

अधिनिर्णय

दिनांक 5-8-2003

श्रम मंत्रालय, भारत सरकार नई दिल्ली ने अपनी अधिसूचना क्रमांक एल० 41012/149/99/आई० आर० (बी० 1) दिनांक 5 जनवरी, 2001 से निम्न विवाद वास्ते अधिनिर्णय इस न्यायालय को प्रेषित किया है।

“Whether the action of the Management of Northern Railway, Bikaner in not regularisation of Shri Mohan Lal S/o Shri Malli Ram for the post of Meson is justified? If not, what relief the workman concerned is entitled?”

प्रार्थी ने अपना मांग-पत्र प्रस्तुत करते हुए कहा है कि प्रार्थी 3-2-66 को अप्रार्थी के सिविल इंजिनियरिंग विभाग में निरीक्षक रत्नांद की जायशाला में मैसन के कार्य पर दैनिक वेतन पर नियुक्त हुआ, प्रार्थी

ने 2-7-66 से 3-2-77 तक लगातार कार्य किया तथा 3-7-66 से प्राथी वेतनमान 110—180 का वेतन भत्ता पाने का अधिकारी हो गया, प्रार्थी को 3-7-66 से 31-12-72 तक मैसन कार्य का वेतनमान रूपये 110—180 एवं दिनांक 1-1-73 से 30-9-75 तक वेतनमान 260—480 दिया गया, 27-3-80 से पुनः मैसन के पद पर एवं वेतनमान 260—480 दिया गया, प्रार्थी को कोई पदान्तित नहीं दी गई, प्रार्थी 1-10-75 से 26-3-80 तक मैसन के वेतन भत्ता एवं समस्त लाभ प्राप्त करने का अधिकारी हो गया, प्रार्थी 240 दिन से अधिक रेल कार्य करने के आधार पर लगातार कार्य करने वाला औद्योगिक कर्मचारी हो गया, प्रार्थी का कथन है कि उसे बिना किसी पदोन्नति के आदेश के वेतनमान 260—400 बजाय वेतनमान रूपया 196—232 खलासी के वेतनभत्ता दिया जाने लगा जब कि प्रार्थी दो वर्ष से अधिक मैसन कार्य करने के आधार पर प्रथम नियुक्ति मैसन के पद पर होने के आधार पर मैसन पद के समस्त सेवा लाभ वरिष्ठता, स्थाईकरण नियमन आदि पाने का अधिकारी हो गया, प्रार्थी से लगातार अप्रार्थी द्वारा मैसन का कार्य लिया गया, खलासी का वेतनमान देने से पूर्व कोई नोटिस प्रार्थी को नहीं दिया गया। प्रार्थी ने अपना औ० विं० केन्द्रीय श्रम विभाग के माध्यम से प्रस्तुत किया जिसमें केन्द्रीय औद्योगिक न्यायाधिकरण जयपुर द्वारा प्रकरण सं० 10/85 दिनांक 7-5-91 को निर्णित किया व अधिनिर्णित किया कि श्रमिकों को 1-10-75 से 26-3-80 तक का वेतनमान 260—400 से 196—232 करना न्यायोचित नहीं था, उक्त अवधि में ये श्रमिक 260—400 का वेतनमान पाने के अधिकारी हैं और नियोजक तीन माह की अवधि में उक्त राशि अदा नहीं करेगा तो 12 प्रतिशत वार्षिक की दर से ब्याज भी देय होगा, 100/- रुपया मुकदमा खर्च दिलाया गया, इस पंचाट के विरुद्ध एक प्रार्थना-पत्र प्रार्थी द्वारा प्रस्तुत किया जो 37/93 के रूप में दर्ज होकर 7-1-94 को निर्णित किया गया जिसके विरुद्ध विपक्षी द्वारा कोई अपील नहीं की गई। प्रार्थी ने 18-2-94 को एक प्रतिवेदन भी मण्डल रेल प्रबन्धक बीकानेर को प्रस्तुत किया कि न्यायाधिकरण अभियन्ता नो० रेलवे ने प्रार्थी की गोंगमैन के पद पर एवं वेतनमान में स्क्रीनिंग की गई, प्रार्थी को न्यायिक आदेशों के बावजूद 1-10-75 से 26-3-80 तक वेतनमान 196—232 एवं वेतनमान 260—400 में अन्तर राशि का भुगतान नहीं किया गया व प्रार्थी के मैसन पद पर नियमित करने के आदेश भी जारी नहीं किये गये। प्रार्थी का कथन है कि उसके पक्ष में पारित पंचाट दिनांक 7-5-91 अंतिम हो चुका है जिसके अनुसार प्रार्थी वेतनमान 260—400 एवं वेतनमान 196—232 के अन्तर की राशि पर ब्याज प्राप्त करने का अधिकारी है। अन्त में निवेदन किया है कि प्रार्थी को खलासी के पद की बजाय मैसन के पद पर नियमित करने एवं दिनांक 1-10-75 से 26-3-80 तक खलासी एवं मैसन के वेतनमान के अन्तर की राशि 12 प्रतिशत ब्याज सहित दिलाये जाने का एवार्ड पारित किया जावे।

अप्रार्थी की ओर से जवाब में कहा गया है कि प्रार्थी की प्रथम नियुक्ति 25-9-1962 है, 3-2-1966 से 2-7-1966 तक 149 दिन ही बनते हैं, प्रार्थी 1-10-75 से 26-3-80 तक की अवधि का मैसन के वेतन अन्तर की राशि पाने का अधिकारी नहीं है, कर्मचारी चतुर्थ श्रेणी के पैनल पर सहायक कार्मिक अधिकारी बीकानेर के पत्रांक 13-2-74 द्वारा ग्रुप डी के पद के लिये सफल घोषित होने के कारण सहायक

अभियन्ता रतनगढ़ के पत्रांक 17-6-74 के द्वारा कोल एस० खलासी के पद पर ग्रेड 196—232 में नियुक्त हेतु ऑफर दिया गया जिसे प्रार्थी ने स्वीकार किया अतः प्रार्थी की नियुक्ति खलासी के ग्रुप डी के पद पर रेलपथ निरीक्षक रतनगढ़ के अधीनस्थ कर दी गई जहां प्रार्थी ने 19-6-74 को डियुटी जोड़न की तत्पश्चात् उसे 19-6-75 से नियमित कर दिया गया तथा 27-3-80 को प्रार्थी को टी० सी० ए० के पद पर मैसन ग्रेड 260—400 में नियमित कर दिया गया क्योंकि प्रार्थी ने 30-9-75 से पहले समय-समय पर केजुअल लेबर मैसन के रूप में कार्य किया तथा न्यायालय के आदेश की पालना में प्रार्थी को वेतन अन्तर का भुगतान भी कर दिया गया। यह भी कहा है कि प्रार्थी को 1-10-75 से 26-3-80 के अन्तर के भुगतान के आदेशों को सी० ए० टी० जोधपुर ने 7-1-1994 को मोडिफाईड कर सिर्फ नियमित करने के आदेश प्रदान किये थे जिसकी अनुपालन में उसे नियमित किया जा चुका है अतः 1-10-75 से 26-3-80 तक की अवधि के वेतन अन्तर के भुगतान का प्रार्थी अधिकारी नहीं है, उपरोक्त विवाद का फैसला सी० ए० टी० जोधपुर द्वारा हो चुका है और उसकी पालना भी हो चुकी है। अन्त में निवेदन किया है कि प्रार्थी का भांग-पत्र सत्य खारिज किया जावे।

प्रार्थी ने भांग-पत्र के समर्थन में सबव्य का शपथ-पत्र प्रस्तुत किया जिसपर अप्रार्थी प्रतिनिधि द्वारा जिरह की गई तथा अप्रार्थी की ओर से सत्यनारायण शर्मा का शपथ-पत्र प्रस्तुत किया जिस पर प्रार्थी प्रतिनिधि द्वारा जिरह की गई, प्रार्थी की ओर से विभिन्न दस्तावेजात की फोटो प्रतियां पेश की गईं।

दोनों पक्षों के प्रतिनिधीगण की बहस सुनी, पत्रावली का अवलोकन किया।

प्रार्थी द्वारा यह कहा गया है कि 3-2-66 को उसे रतनगढ़ की कार्यशाला में मैसन के कार्य हेतु नियुक्त किया। उसने लगातार मैसन का कार्य किया परन्तु 1-10-75 से 26-3-80 तक उसे मैसन का वेतनमान व लाभ नहीं दिया गया है जो त्रुटीपूर्ण है अतः यह राशि दिलाई जाए।

विपक्षी द्वारा यह कहा गया कि पूर्व में केन्द्रीय औद्योगिक अधिकरण द्वारा निर्णय पारित किया गया जिसे केन्द्रीय प्रशासनिक न्यायाधिकरण द्वारा संशोधित कर दिया गया उसकी पालना हो गई है और प्रार्थी अन्तर राशि प्राप्त करने का अधिकारी नहीं है।

प्रार्थी का यह कथन है कि केन्द्रीय प्रशासनिक अधिकरण के आदेश की पालना रेलवे द्वारा नहीं की। विपक्षी की ओर से सत्यनारायण शर्मा सहायक मण्डल इन्जीनियर पेश हुए हैं परन्तु यह बताने में असमर्थ रहे हैं कि प्रार्थी ने विवादित अवधि में मैसन का काम किया या नहीं। पूर्व में प्रार्थी के पक्ष में केन्द्रीय औद्योगिक न्यायाधिकरण का निर्णय हुआ है और उसमें 1-10-75 से 26-3-80 तक वेतनमान प्रार्थी को दिलाया गया है। इसी के सम्बन्ध में केन्द्रीय औद्योगिक अधिकरण का निर्णय भी हुआ है जिसमें प्रार्थी की सेवाएं नियमितकरण करने का आदेश दिया गया है। इन आदेशों की पालना विपक्षी द्वारा की गई हो ऐसी कोई स्थिति पेश नहीं हुई है।

इस प्रकार यह स्थिति स्पष्ट है कि प्रार्थी ने मैसन का काम किया उसके बावजूद उसकी सेवाएं मैसन के पद पर नियमित न किया जाना जिसन्देह ही त्रुटीपूर्ण है। प्रार्थी की ओर से 1-10-75 से

26-3-80 तक का मैसेन का वेतनमान व अन्तर राशि भी चाही गई है परन्तु इस सम्बन्ध में कोई अधिसूचना नहीं है। ऐसी स्थिति में इस प्रश्न का निर्णय इस अधिसूचना के अन्तर्गत नहीं होना है, अधिसूचना के बल नियमितिकरण के सम्बन्ध में है और प्रार्थी नियमितिकरण का हकदार है।

प्रार्थी द्वारा अपने समर्थन में डी. एन. जे. 2003 (1) राजस्थान पेज 342 कालु बनाम भारत संघ, एस.एल.जे. 1996 (1) पेज 116 रामकुमार बनाम भारत संघ के विनिश्चय प्रस्तुत किये जिनमें प्रतिपादित सिद्धांतों पर कोई विवाद नहीं है।

अधिनिर्णय

अतः यह अधिनिर्णित किया जाता है कि मण्डल रेल प्रबन्धक उत्तर रेलवे बीकानेर द्वारा श्रमिक मोहनलाल पुत्र श्री मालीराम को मैसेन के पद पर नियमित न किया जाना अनुचित एवं अवैध है। अतः आदेशित किया जाता है कि अप्रार्थी नियोजक प्रार्थी को मैसेन के पद पर नियमित करे तथा वेतन के अन्तर की राशि का भुगतान करे।

यह अधिनिर्णय आज दिनांक 05-8-2003 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया।

निशा गुप्ता, न्यायाधीश

नई दिल्ली, 7 नवम्बर, 2003

का.आ. 3303.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एंड जयपुर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में ऑद्योगिक अधिकरण-कम-रांबर कोट, जोधपुर के पंचाट (संदर्भ संख्या आई डी.नं. 24/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-11-2003 को प्राप्त हुआ था।

[सं. एल.-12012/15/2002-आई. आर. (बी. I)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 7th November, 2003

S.O. 3303.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 24/2002) of the Industrial Tribunal/Labour Court, Jodhpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workman, which was received by the Central Government on 06-11-2003.

[No. L-12012/15/2002-IR (B-I)]

AJAY KUMAR, Desk Officer

अनुबन्ध

ऑद्योगिक विवाद अधिकरण एवं श्रम न्यायालय

जोधपुर

पीठासीन अधिकारी : श्रीमती निशा गुप्ता, आर० एच० जे० एस०

औ० विं० (केन्द्रीय) सं० : 24/2002

श्री सुरेश नारायण शर्मा मार्फत श्री ललित शर्मा प्रेसिडेन्ट अखिल भारतीय एस.बी.बी.जे. कर्मचारी संघ, सुराणा मार्केट ब्रॉन्च, पाली मारवाड़

...प्रार्थी

बनाम

स्टेट बैंक ऑफ बीकानेर एंड जयपुर 223, शास्त्रीनगर, जोनल आफिस, जोधपुर

...अप्रार्थी

उपस्थिति :—

(1) प्रार्थी प्रतिनिधि उप०

(2) अप्रार्थी प्रतिनिधि श्री मनोज कुमार शर्मा उप०

अधिनिर्णय

दिनांक 3-7-2003

श्रम मंत्रालय भारत सरकार नई दिल्ली ने अपनी अधिसूचना क्रमांक एल० 12012/15/2002/आई० आर० (बी० I) दिनांक 28-6-2002 के जरिए निम्न विवाद वास्ते अधिनिर्णय इस न्यायालय को प्रेषित किया है :—

“क्या उप महाप्रबन्धक स्टेट बैंक ऑफ बीकानेर एंड जयपुर, अंचल कार्यालय जोधपुर द्वारा कर्मकार श्री सुरेश नारायण शर्मा को दिनांक 15-7-2000 से कम्प्यूटर ऑपरेटर के पद पर पदस्थापित नहीं किया जाना उचित एवं वैध है? यदि नहीं तो श्रमिक अपने नियोजक से क्या राहत पाने का हकदार है?”

उक्त रेफरेंस इस न्यायालय में प्राप्त होने पर दर्ज रजिस्टर्ड किया जाकर पक्षकारों को जरिये नोटिस आहुत किया गया, प्रार्थी की ओर से 23-1-2003 को रविंद्र चौहान हाजिर हुए व अधिकार पत्र पेश किया व मांग-पत्र को समय चाहा जिस पर 20-3-2003 की पेशी नियत की गई, 20-3-2003 को भी मांग-पत्र को समय चाहा जिस पर 16-5-2003 की पेशी नियत की गई, दिनांक 16-5-2003 की पेशी पर प्रार्थी का एक प्रार्थना पत्र डाक से प्राप्त हुआ जिसमें उसने अंकित किया कि वह इस विवाद को आगे चलाने में रुचि नहीं रखता है। आज स्वयं प्रार्थी हाजिर नहीं है न ही कोई मांग-पत्र प्रस्तुत किया गया है। अतः समस्त तथ्यों इवं परिस्थितियों को देखते हुए इस प्रकरण में “कोई विवाद नहीं रह जाने का अधिनिर्णय (नो डिस्प्युट एवार्ड)” पारित किया जाना उचित प्रतीत होता है।

अधिनिर्णय

प्रार्थी द्वारा प्रार्थना-पत्र प्रस्तुत कर विवाद को आगे चलाने में रुचि नहीं रखते व आज स्वयं हाजिर नहीं होने तथा मांग-पत्र प्रस्तुत नहीं करने के कारण इस प्रकरण में “कोई विवाद नहीं रह जाने का अधिनिर्णय (नो डिस्प्युट एवार्ड)” पारित किया जाता है”।

यह अधिनिर्णय आज दिनांक 3-7-2003 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया।

निशा गुप्ता, न्यायाधीश